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The NORTH CAROLINA *REGISTER*

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INFORMATION ABOUT THE NORTH CAROLINA REGISTER AND ADMINISTRATIVE CODE

NORTH CAROLINA REGISTER

The *North Carolina Register* is published bi-monthly and contains information relating to agency, executive, legislative and judicial actions required by or affecting Chapter 150B of the General Statutes. All proposed, administrative rules and amendments filed under Chapter 150B must be published in the Register. The Register will typically comprise approximately fifty pages per issue of legal text.

State law requires that a copy of each issue be provided free of charge to each county in the state and to various state officials and institutions. The *North Carolina Register* is available by yearly subscription at a cost of one hundred and five dollars (\$105.00) for 24 issues.

Requests for subscriptions to the *North Carolina Register* should be directed to the Office of Administrative Hearings, P. O. Drawer 11666, Raleigh, N. C. 27604, Attn: Subscriptions.

ADOPTION, AMENDMENT, AND REPEAL OF RULES

An agency intending to adopt, amend, or repeal a rule must first publish notice of the proposed action in the *North Carolina Register*. The notice must include the time and place of the public hearing; a statement of how public comments may be submitted to the agency either at the hearing or otherwise; the text of the proposed rule or amendment; a reference to the Statutory Authority for the action and the proposed effective date.

The Director of the Office of Administrative Hearings has authority to publish a summary, rather than the full text, of any **amendment** which is considered to be too lengthy. In such case, the full text of the rule containing the proposed amendment will be available for public inspection at the Rules Division of the Office of Administrative Hearings and at the office of the promulgating agency.

Unless a specific statute provides otherwise, at least 30 days must elapse following publication of the proposal in the *North Carolina Register* before the agency may conduct the required public hearing and take action on the proposed adoption, amendment or repeal.

When final action is taken, the promulgating agency must file any adopted or amended rule for approval by the Administrative Rules Review Commission. Upon approval of ARRC, the adopted or amended rule must be filed with the Office of Administrative Hearings. If it differs substantially from the proposed form published as part of the public notice, upon request by the agency, the adopted version will again be published in the *North Carolina Register*.

A rule, or amended rule cannot become effective earlier than the first day of the second calendar month after the adoption is filed with the Office of Administrative Hearings for publication in the NCAC.

Proposed action on rules may be withdrawn by the promulgating agency at any time before final action is taken by the agency.

TTEMPORARY RULES

Under certain conditions of an emergency nature, some agencies may issue temporary rules. A temporary rule becomes effective when adopted and remains in

effect for the period specified in the rule or 180 days whichever is less. An agency adopting a temporary rule must begin normal rule-making procedures on the permanent rule at the same time the temporary rule is adopted.

NORTH CAROLINA ADMINISTRATIVE CODE

The North Carolina Administrative Code (NCAC) is a compilation and index of the administrative rules of 25 state agencies and 38 occupational licensing boards. The NCAC comprises approximately 15,000 letter size single spaced pages of material of which approximately 35% is changed annually. Compilation and publication of the NCAC is mandated by G.S. 150B-63(b).

The Code is divided into Titles and Chapters. Each state agency is assigned a separate title which is further broken down by chapters. Title 21 is designated for occupational licensing boards.

The NCAC is available in two formats.

- (1) Single pages may be obtained at a minimum cost of two dollars and 50 cents (\$2.50) for 1 pages or less, plus fifteen cents (\$0.15) per each additional page.
- (2) The full publication consists of 52 volumes totaling in excess of 15,000 pages. It is supplemented monthly with replacement pages. One year subscription to the full publication including supplements can be purchased for seven hundred and fifty dollars (\$750.00). Individual volumes may also be purchased with supplement service. Renewal subscriptions for supplements to the initial publication available.

Requests for pages of rules or volumes of the NCAC should be directed to the Office of Administrative Hearings.

NOTE

The foregoing is a generalized statement of the procedures to be followed. For specific statutory language it is suggested that Articles 2 and 5 of Chapter 150B of the General Statutes be examined carefully.

CITATION TO THE NORTH CAROLINA REGISTER

The *North Carolina Register* is cited by volume, issue, page number and date. **1:1 NCR 101-201, April 1, 1986** refers to Volume 1, Issue 1, pages 101 through 201 of the *North Carolina Register* issued on April 1, 1986.

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NORTH CAROLINA REGISTER



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Publication Schedule
(January 1990 - December 1991)

Issue Date	Last Day for Filing	Last Day for Electronic Filing	Earliest Date for Public Hearing & Adoption by Agency	* Earliest Effective Date
01 02 90	12 07 89	12 14 89	02 01 90	05 01 90
01 16 90	12 20 89	12 29 89	02 15 90	05 01 90
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02 15 90	01 25 90	02 01 90	03 17 90	06 01 90
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12 02 91	11 07 91	11 14 91	01 01 92	04 01 92

* The "Earliest Effective Date" is computed assuming that the public hearing and adoption occur in the calendar month immediately following the "Issue Date", that the agency files the rule with The Administrative Rules Review Commission by the 20th of the same calendar month and that ARRC approves the rule at the next calendar month meeting.

EXECUTIVE ORDERS

EXECUTIVE ORDER NUMBER 114 BUDGET ADMINISTRATION

Article III, Sec. 5(3) of the Constitution provides that the State may not operate at a deficit during the fiscal period covered by a budget. For these purposes, a "deficit" is defined as having been incurred when total expenditures for the fiscal period of the budget exceed the total of receipts during the period, plus the surplus remaining in the State Treasury at the beginning of the period. The fiscal period for the current budget is the 1989-91 biennium.

To insure that the State does not incur a deficit for the biennium covered by a budget, Article III, Sec. 5(3) requires the Governor to survey continually the collection of revenue. If, as a result of his surveys, he determines that actual receipts for the biennium, when added to the surplus remaining in the Treasury at the beginning of the biennium, will not be sufficient to pay budgeted expenditures, the Governor, after first making adequate provision for the prompt payment of the principal and interest on the State's outstanding bonds and notes, must effect the necessary economies in State expenditures to keep the deficit from occurring.

Continually surveying the collection of the State's revenues pursuant to Article III, Sec. 5(3) of the Constitution is a normal function of the Office of Budget and Management and reports on its surveys are routinely received by me.

The budget for the 1989-91 biennium calls for expenditures for the biennium of \$24,580,332,439. The combined surplus remaining in the Treasury at the beginning of the biennium for the general fund and highway fund was budgeted at \$573,901,175, and receipts for the period were budgeted to be \$24,006,431,264. As enacted, the budget adopted by the General Assembly for the biennium was a balanced budget.

In application it has not turned out to be balanced.

Initially, the Office of Budget and Management reports of its surveys of the collection of the State's revenues indicated that receipts for the biennium, as actually received, were approximately as budgeted. Accordingly, actual expenditures for the biennium were set in keeping with the budgeted appropriations. As the biennium progressed, however, cumulative receipts, as actually received, began to lag budgeted receipts.

In recent months the deviation between actual and budgeted receipts has reached the point that it appears that the budget enacted by the General Assembly for the 1989-91 biennium cannot be

administered as enacted without the State incurring a deficit in its administration. Accordingly, it is prudent that the power given the Governor by Article III, Sec. 5(3) of the Constitution, to insure that the State does not incur deficits in the administration of its budgets be invoked.

THEREFORE, pursuant to authority granted to the Governor by Article III, Sec. 5(3) of the Constitution and to fulfill the duties required of the Governor thereunder:

1. It is found as a fact that based on general fund, highway fund and highway trust fund revenue collections through April 30, 1990, and projections for these revenues through June 30, 1990, and projections for these revenues through June 30, 1991, actual receipts for the 1989-91 biennium will not meet those anticipated and budgeted by the 1989 General Assembly.
2. From this fact it is determined and concluded that unless economies in State expenditures are made, the State's general fund expenditures will exceed general fund receipts, including transfers from the highway trust fund, for the biennium by \$842 million and the State's highway fund and highway trust fund expenditures will exceed highway fund receipts and highway trust fund receipts for the biennium by \$165.15 million.
3. To insure that a deficit is not incurred in the administration of the State budget for the 1989-91 biennium, the following economies in State expenditures are found to be necessary and are hereby ORDERED:
 - (a) The Office of State Budget and Management will reduce as necessary State expenditures from funds appropriated to operate State departments and institutions;
 - (b) The Office of State Budget and Management will reduce as necessary State aid funds to the State Board of Education, to the State Board of Community Colleges and to other non-state recipients;
 - (c) The Office of State Budget and Management will halt expenditures for capital improvement projects as necessary for which State funds have been appropriated but not placed under State contract, and if necessary transfer any unused capital improvement funds to the general fund and/or the highway fund;
 - (d) The Office of State Budget and Management will transfer as necessary non-general fund and non-highway fund receipts into the general fund to support

EXECUTIVE ORDERS

- appropriation expenditures in order to avoid a deficit in the general fund;
- (e) The Office of State Budget and Management may borrow receipts from non-general fund State receipts and non-highway fund State receipts for support of general fund appropriation expenditures;
- (f) The Office of State Budget and Management may order the cancellation of purchase orders in the State general fund supported departments and institutions for which there are insufficient funds available;
- (g) The Office of the State Controller, at the direction of the Director of the Budget, is directed to monitor disbursements as presented on requisitions for CASH, and as necessary, shall release CASH requisitions in the following priority order for payment of:
1. state debt;
 2. payrolls and public assistance benefits;
 3. state aid to local government;
 4. health and medical provider payments; and
 5. all other necessary expenditures.
- (h) The Office of the State Controller is directed to receive the employer portion of retirement contributions for all state funded retirement systems and to place such funds in a special reserve as established by the Office of State Budget and Management.
4. This Executive Order is effective immediately and shall remain in effect, as written, until terminated or amended by further Executive Order.

Done in the Capital City of Raleigh, North Carolina, this the 8th day of May, 1990.

**EXECUTIVE ORDER NUMBER 115
AMENDING EXECUTIVE ORDER NUMBER 92**

**ENTITLED ESTABLISHING THE WESTERN
NORTH CAROLINA ENVIRONMENTAL
COUNCIL**

WHEREAS, by Executive Order Number 92, I established the Western North Carolina Environmental Council; and

WHEREAS, it has been made to appear to me that certain amendments to Executive Order Number 92 are necessary in light of subsequent legislation enacted by the General Assembly;

THEREFORE, by the authority vested in me as Governor by the Constitution and laws of North Carolina, IT IS ORDERED:

Section 3 of Executive Order Number 92 is amended in part to read: "... The Secretaries of the Departments of Administration, Economic and Community Development, Environment, Health, and Natural Resources, and Transportation or their designees shall be ex officio members of the Council."

Section 9 of Executive Order Number 92 is amended in part to read: "... The Departments of Administration, Economic and Community Development, Environment, Health, and Natural Resources, and Transportation, together, shall furnish the Council with such staff as it reasonably shall need."

Section 10 of Executive Order Number 92 is amended in part to read: "... Funds for the reimbursement of such expenses shall be made available from funds appropriated to the Departments of Administration, Economic and Community Development, Environment, Health, and Natural Resources, and Transportation as directed by the Director of the Budget."

These amendments shall be effective immediately. All other provisions of Executive Orders Number 92 and 96 shall remain in effect and unchanged.

Done in Raleigh, this the 22nd day of May, 1990.

**EXECUTIVE ORDER NUMBER 116
AMENDING AND EXTENDING EXECUTIVE
ORDER NUMBER 78
GOVERNOR'S TASK FORCE ON INJURY
PREVENTION**

WHEREAS, I established by Executive Order Number 78 the Governor's Task Force on Injury Prevention; and

WHEREAS, it has been made known to me that the Task Force should continue;

THEREFORE, by the authority vested in me as Governor by the Constitution and laws of North Carolina, IT IS ORDERED:

Section 1. Executive Order Number 78, Section 3, paragraph B, is amended to read:

B. The Task Force shall have the following duties:

- 1) promote coordination of the State's injury prevention efforts so that resources can be used efficiently;
- 2) strengthen injury prevention efforts in the State;

EXECUTIVE ORDERS

- 3) serve as a resource to the Injury Control Section of the Department of Environment, Health, and Natural Resources; and
- 4) encourage study and discussion of safety issues.

Section 2. Executive Order Number 78, as amended herein, is extended through November 1, 1992.

Done in Raleigh, North Carolina, this the 22nd day of May, 1990.

**TITLE I - DEPARTMENT OF
ADMINISTRATION**

Notice is hereby given in accordance with G.S. 150B-12 that the Department of Administration intends to adopt rule cited as 1 NCAC 6B .0212.

The proposed effective date of this action is October 1, 1990.

The public hearing will be conducted at 2:00 p.m. on July 26, 1990 at Department of Administration, Property Office Conference Room 4038, 116 West Jones Street, Raleigh, NC 27603-8003.

Comment Procedures: Any interested person may present his/her comments either in writing prior to or at the hearing or orally at the hearing. Any person may request information, permission to be heard or copies of the proposed regulations by writing or calling David McCoy, Department of Administration, 116 West Jones Street, Raleigh, NC 27603-8003, (919) 733-6888.

CHAPTER 6 - STATE PROPERTY AND CONSTRUCTION

SUBCHAPTER 6B - REAL PROPERTY

SECTION .0200 - ACQUISITION OF REAL PROPERTY

.0212 ANNUAL LEASE MORE THAN \$150,000

For space needs where the annual rental exceeds one hundred fifty thousand dollars (\$150,000), Form PO-26 provides the basic steps to follow in the leasing procedures required by G.S. 146-25.1. Additional guidance is provided in this Rule:

- (1) **Specifications.** The requesting agency prepares a Form PO-27. This serves as a guideline for supplying the information which a prospective lessor needs to complete a lease proposal.
- (2) **Advertising.** Newspaper ads will be prepared by the Division of State Property and will be forwarded to the agency for submission to a newspaper of general circulation in the "Legal Notices" or other appropriate section of the newspaper. The ad must run for at least five consecutive days and give a specific cut off date for receiving proposals. The published cut off date must be at least seven days after the last day the ad is run.
- (3) **Proposals.** All proposals must be submitted on Form PO-28 which includes the basic

information that is necessary to evaluate and compare each proposal received. All proposals must be submitted directly to the Division of State Property prior to the published cut off period.

- (4) **Space Selection.** All proposals will be reviewed by the Division of State Property and the requesting agency. A set of proposals will be selected, based on the General Statutes and the rules contained in this Chapter, for further review and consideration.
 - (a) The submitters of proposals selected for further review shall be notified in writing by the Division of State Property. The notice of selection for further review will include the date, time, and location at which a Proposers' Meeting will be conducted.
 - (b) At this meeting, the selected proposers will be given the opportunity to submit a final low price proposal. Price proposals may be submitted via the U.S. Mail, telegraph, telefax or other commonly acceptable medium of communication in lieu of the proposer or his agent being physically present at the meeting. In the event that identical price proposals are submitted by two or more proposers, the proposers or their agents present at the meeting will be granted another opportunity to submit a lower price proposal. This process will continue until a lowest price proposal is received by the Division of State Property. When the lowest price proposal is received no further price negotiations will be conducted by the Division of State Property.
 - (c) After reviewing all the relevant data, a determination for desired space will be made by the Division of State Property; this decision will be reviewed by the requesting agency. A Form PO-1 must be submitted by the agency to the Division of State Property requesting acquisition of the space.
 - (d) The Division of State Property will present their recommended proposal to the Council of State for its review and consideration. If the low price proposal is not selected, a statement of justification will be submitted to the Council of State.
 - (e) Should the selected proposal be withdrawn or for any other reason not be available, all submitted proposals will be reconsidered and if none are acceptable, the Division of State Property will proceed to obtain suitable space in the manner pro-

PROPOSED RULES

- vided by the General Statutes and the rules contained in this Chapter.
- (f) Space selections will be made in keeping with G.S. 146-23.1 regarding the acquisition of buildings and space in buildings having historic, architectural or cultural significance.
- (5) Exception. If adherence to the procedure in this Rule was not feasible in a particular situation, the Division of State Property will notify the Council of State of the deviation at the time the lease is presented for Council of State consideration.

Statutory Authority G.S. 143-341(4)(d); 146-25.

TITLE 10 - DEPARTMENT OF HUMAN RESOURCES

Notice is hereby given in accordance with G.S. 150B-12 that the Department of Human Resources/Division of Services for the Blind intends to amend rules cited as 10 NCAC 19F .0602; 19G .0801 - .0802; 19H .0102, .0403 and adopt rules cited as 10 NCAC 19F .0603; 19G .0803 - .0827.

The proposed effective date of this action is November 1, 1990.

The public hearing will be conducted at 10:00 a.m. on September 8, 1990 at DSB Conference Room, Fisher Building, Governor Morehead Campus, 309 Ashe Avenue, Raleigh, NC 27606.

Comment Procedures: Any interested person may present his/her comments either in writing three days prior to or at the hearing or orally at the hearing for a maximum of ten minutes. Any person may request information by writing or calling Mr. Herman Gruber, Designee, Division of Services for the Blind, 309 Ashe Avenue, Raleigh, NC. (919) 733-9822.

CHAPTER 19 - SERVICES FOR THE BLIND

SUBCHAPTER 19F - INDEPENDENT LIVING SERVICES

SECTION .0600 - INDIVIDUAL RIGHTS

.0602 CONFERENCE WITH REGIONAL SUPERVISOR

If the client is dissatisfied with an agency action taken in accordance with this Subchapter, he has the right to request a fair hearing. The hearing will be held in accordance with 10 NCAC 19B .0201.

(a) If a client is dissatisfied with an action or service delivered by the independent living service program, that client may request a conference with the regional supervisor.

(b) A conference shall be held within 30 calendar days from the receipt of the original request.

(c) If the conference solves the grievance or dissatisfaction, this will be stated in writing and signed by the client.

Statutory Authority G.S. 111-16; 143B-157.

.0603 APPEAL FOR FAIR HEARING

(a) If the results of the conference are unsatisfactory, the client will be informed of his or her right to a fair hearing.

(b) All petitions for review of agency decisions (G.S. 150B) will be heard by the Office of Administrative Hearings. The applicant recipient is notified in writing that he has the right to petition the Office of Administrative Hearings and request a fair hearing. The applicant recipient shall be instructed to contact OAH and request the specific forms which the applicant recipient must complete.

(c) In this same written notice the applicant recipient shall be instructed that they have 60 calendar days from the date they receive the agency notice to request a fair hearing through OAH. Any petition for a contested case must be returned by the applicant recipient directly to the Office of Administrative Hearings.

Statutory Authority G.S. 111-16; 143B-157.

SUBCHAPTER 19G - VOCATIONAL REHABILITATION

SECTION .0800 - HEARING PROCEDURE

.0801 APPLICABILITY OF RULES

(a) An applicant for or a recipient of rehabilitation services under the state plan who is dissatisfied with any state agency action with regard to the furnishing or denial of services will be advised of his right to request a conference or a hearing, or both.

(b) The rehabilitation counselor should take note of the following procedure in implementing the appeals process:

(1) Clients who are dissatisfied with agency (rehabilitation counselor) action with regard to services shall be informed of their right to request a conference with the supervisor (regional rehabilitation supervisor). In instances where a client is dissatisfied with a counselor's decision regarding services, the rehabilitation

~~counselor shall provide the client with the calling card of his regional rehabilitation supervisor.~~

- (2) If the conference does not satisfy the client, then he shall be informed of his right to appeal for a formal hearing in accordance with 10 NCAC 10B .0202.

Except for administrative reviews and appeals to be conducted according to the provisions of Rules .0802 through .0828 of this Section, appeals concerning the administration of the Rules in this Chapter shall be filed and conducted in accordance with G.S. 150B and 10 NCAC 1B .0200.

Authority G.S. 111-28; 143-546; 143B-157; 150B-2; 150B-23; 34 C.F.R. 361.48.

.0802 WRITTEN INFORMATION FOR APPLICANTS AND CLIENTS

All contested cases arising under this Subchapter shall be heard in accordance with 10 NCAC 10B .0202.

(a) All applicants for and clients receiving vocational rehabilitation services shall be informed of the opportunities for an administrative review and an appeal available under 34 C.F.R. 361.48 and Rules .0802 through .0828 of this Section.

(b) Written information shall be provided to all applicants and clients informing them:

- (1) of their right to an appeals hearing when they are dissatisfied with any determinations made by the Division concerning the furnishing or denial of services;
- (2) that they have the option of seeking resolution of the issue through an administrative review prior to an appeals hearing;
- (3) that the rehabilitation counselor or other designated staff of the Division will assist them in preparation of the written request for an administrative review or appeal and will inform them of the name and address of the appropriate regional rehabilitation supervisor to whom the request shall be submitted; and
- (4) that they may receive assistance with the resolution of their problems through the Client Assistance Program.

(c) At the time of initial application, all applicants shall be informed verbally of the name and address of the regional rehabilitation supervisor to whom requests for administrative reviews or appeals shall be submitted. At the time an applicant or client wishes to submit a request for an administrative review or appeals hearing, the same information shall be furnished in writing to the individual.

Authority G.S. 143-546; 143B-157; 150B-2; 150B-23; 34 C.F.R. 361.48.

.0803 -REQUEST FOR ADMINISTRATIVE REVIEW AND APPEALS HEARING

(a) When any applicant for or client receiving vocational rehabilitation services wishes to request an administrative review or an appeals hearing, the individual shall submit a written request to the appropriate regional rehabilitation supervisor of the Division.

(b) The request shall indicate if the individual is requesting:

- (1) An administrative review and an appeals hearing to be scheduled concurrently; or
- (2) only an appeals hearing.

(c) The request shall contain the following information:

- (1) the name, address, and telephone number of the applicant or client; and
- (2) a concise statement of the determination made by the rehabilitation staff for which an administrative review or appeal is being requested and the manner in which the person's rights, duties or privileges have been affected by the determination(s).

(d) If a client is requesting an administrative review and the issue to be reviewed concerns the denial of services already underway under the client's individualized written rehabilitation plan (IWRP) and the client wishes the disputed services to continue during the administrative review, the client shall indicate the desire to have the services continued in the request for an administrative review and submit the request prior to the effective date of the change in the IWRP. The Division shall provide for the continuation of the disputed service set forth in the client's IWRP during the administrative review for a period not to exceed 30 calendar days from the proposed effective date of the change in the IWRP unless the disputed service is contraindicated on the basis of medical or psychological information contained in the individual's case record, in which case the service shall not be continued.

Authority G.S. 143-546; 143B-157; 150B-2; 150B-23; 34 C.F.R. 361-48.

.0804 DIVISION ACTIONS IN RESPONSE TO REQUEST

(a) Upon receipt of a request for an appeals hearing, the regional rehabilitation supervisor shall immediately forward the original request to the Division's Director for appointment of a hearing officer to conduct the appeals hearing.

PROPOSED RULES

(b) If the individual has requested an administrative review in addition to an appeals hearing, the regional rehabilitation supervisor shall:

- (1) make a decision to conduct the administrative review or with the concurrence of the Division Director appoint a designee to conduct the administrative review who:
 - (A) has had no previous involvement in the issues currently in the controversy;
 - (B) can conduct the administrative review in an unbiased way; and
 - (C) has a broad working knowledge of the Division's policies and procedures and the State Plan for Vocational Rehabilitation Services (state plan); and
- (2) proceed with, or direct the designee to proceed with, an administrative review according to the provision of Rules .0805, .0808 and .0809 of this Section.
- (c) The regional rehabilitation supervisor shall send the applicant or client written acknowledgement of receipt of the request and inform the individual that additional information will be sent regarding the administrative review or appeals hearing.
- (d) The regional rehabilitation supervisor shall provide the Client Assistance Program with a copy of the request and the response to the request.

Authority G.S. 143-546; 143B-157; 150B-2; 150B-23; 34 C.F.R. 361.48.

.0805 SCHEDULING AND NOTICE OF ADMINISTRATIVE REVIEW

(a) If an administrative review is to be conducted, the regional rehabilitation supervisor or his designee shall:

- (1) set a date, time and place for the administrative review;
- (2) send written notification by certified mail to the applicant or client and the individual's parent, guardian or representative, as appropriate, of the date, time and place for the administrative review;
- (3) advise the applicant or client in a written notice that the hearing officer will be appointed by the Director to conduct a hearing if the matter is not resolved in the administrative review and that the applicant or client will also receive a written notice from the hearing officer regarding the formal appeals hearing which will be held after the administrative review; and
- (4) notify the Director of the Client Assistance Program (CAP) and other individuals to be involved in the administrative review of the request and the date, time and place

for the administrative review. This notification may be by phone or in writing.

- (b) Prior to the administrative review, the regional rehabilitation supervisor or his designee shall review all previous decisions and casework related to the applicant or client and seek whatever consultation, explanation, documentation, or other information that is deemed necessary, utilizing the CAP Director as appropriate.

Authority G.S. 143-546; 143B-157; 150B-2; 150B-23; 34 C.F.R. 361.48.

.0806 APPOINTMENT OF HEARING OFFICER

Upon receipt of the applicant's or client's request for an appeals hearing from the regional rehabilitation supervisor, the Director shall appoint an impartial hearing officer who meets the criteria of 34 C.F.R. 361.1(e)(2) to conduct a hearing.

Authority G.S. 143-546; 143B-157; 150B-2; 150B-23; 34 C.F.R. 361.1(e)(2); 34 C.F.R. 361.48.

.0807 SCHEDULING AND NOTICE OF FORMAL APPEALS HEARING

(a) The hearing officer shall schedule the formal appeals hearing to be held within 45 days of the original request by the applicant or client as described in Rule .0803 of this Section.

(b) The hearing officer shall provide the applicant or client and the Division written notice of the date, time and place of the hearing and the issue to be considered at least ten days prior to the hearing. A copy of the notice shall be sent to the Client Assistance Program.

(c) The notice shall inform the applicant or client and the Division:

- (1) of the procedures to be followed in the hearing;
- (2) of the particular sections of the statutes, federal regulations, state rules, and state plan involved;
- (3) of the rights of the applicant or client as specified in 34 C.F.R. 361.48(c)(2);
- (4) that the hearing officer may extend the time for the hearing for 20 days if the parties jointly agree to a delay and submit a written statement to the effect to the hearing officer; and
- (5) that the hearing may be cancelled if the matter is resolved in an administrative review.

(d) Notice shall be given personally or by certified mail. If given by certified mail, it shall be deemed to have been given on the delivery date appearing on the return receipt.

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Authority G.S. 143-546; 143B-157; 150B-2; 150B-23; 34 C.F.R. 361.48.

.0808 ADMINISTRATIVE REVIEW

(a) Within 15 days of the original request for an administrative review by the applicant or client, the regional rehabilitation supervisor or his designee shall hold the administrative review with the applicant or client; the individual's parent, guardian, or representative, as appropriate; the CAP Director, as appropriate; and other individuals deemed necessary by the regional rehabilitation supervisor or his designee.

(b) Within five working days of the administrative review, the regional rehabilitation supervisor or his designee shall make a decision and notify the applicant or client and others using the following procedures:

- (1) Compile a written report of the administrative review outlining the purposes of the administrative review, the participants, the decision that was reached, and the rationale for the decision;
- (2) send the written report containing the decision to the applicant or client by certified mail with return receipt requested, with a copy being placed in the individual's official case record, and copies being forwarded to the Director and the CAP Director; and
- (3) provide instructions to the applicant or client of steps that may be taken in response to the decision and the deadline for the responses. A form indicating agreement with the decision and requesting that the hearing be cancelled shall be included for the applicant's or client's signature if the individual agrees with the decision.

Authority G.S. 143-546; 143B-157; 150B-2; 150B-23; 34 C.F.R. 361.48.

.0809 RESPONSE TO ADMINISTRATIVE REVIEW DECISION

(a) If the applicant or client is satisfied with the decision resulting from the administrative review, the individual shall sign the form described in Rule .0808(b)(3) of this Section and submit it to the regional rehabilitation supervisor within five days of receipt of the decision. The regional rehabilitation supervisor shall inform the Director of the request to cancel the hearing immediately and forward the form to the Director who shall submit it to the hearing officer.

(b) If the hearing officer does not receive a written request from the applicant or client that

the hearing be cancelled, the hearing shall be conducted as scheduled unless negotiations produce a settlement that is satisfactory to both parties prior to the hearing.

(c) If the hearing is cancelled, the hearing officer shall send the applicant or client and the Division written notice of the cancellation in the same manner as required for notice of the hearing in Rule .0807(d) of this Section. A copy of the notice of cancellation shall be sent to the Client Assistance Program.

Authority G.S. 143-546; 143B-157; 150B-2; 150B-23; 34 C.F.R. 361.48.

.0810 ADMINISTRATIVE REVIEW BY DIRECTOR

In situations where the issue currently in controversy involves action taken by the central office of the Division, the Director or a designee of the Director shall be responsible for the duties prescribed for the regional rehabilitation supervisor in these Rules.

Authority G.S. 143-546; 143B-157; 150B-2; 150B-23; 34 C.F.R. 361.48.

.0811 PROCEDURES GOVERNING HEARING

The appeals hearing shall be conducted according to the provisions of 34 C.F.R. 361.48(c)(2)(i) and (ii) and (d) and according to Rules .0812 through .0821 and Rule .0824 of this Section.

Authority G.S. 143-546; 143B-157; 150B-2; 150B-23; 34 C.F.R. 361.48.

.0812 VENUE

(a) The appeals hearing shall be held in the county of residence in this state of the applicant or client.

(b) Any party desiring a change of venue shall file a written motion for a change of venue with the hearing officer and serve copies of that motion on all other parties at least seven days prior to the date for which the hearing is set.

(c) The motion shall include the following information:

- (1) The name, address, and telephone number of the movant;
- (2) identification by the case name and docket number of the proceeding for which the change is sought;
- (3) the time, date, and place for which the hearing is scheduled;
- (4) the county in which the party requests that the hearing be held;
- (5) a statement of the requested change, including the names and addresses of any

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witnesses whose convenience represents the basis for this request; and

(6) any other factors that should be included in ruling on the request.

(d) Any party may object to a motion for a change of venue by filing a written notice of objection with the hearing officer within three days after receipt of the motion and service copies of the notice of objection on all other parties. The notice of objection shall state clearly the grounds for the objection.

(e) The hearing officer shall determine whether a change of venue is appropriate and shall issue a order granting or denying the motion. The order shall state the reasons for the decision. Copies of the order shall be served on all parties.

Authority G.S. 143-546; 143B-157; 150B-2; 150B-23; 34 C.F.R. 361.48.

.0813 DISCOVERY

(a) Parties in appeals hearings shall exchange information voluntarily, seek access to public documents as provided by law, and exhaust other informal means of obtaining discoverable material.

(b) Within 15 days after receipt of a request for discovery or within such other time limit as the hearing officer may set, the party from the discovery is requested shall either:

- (1) provide the requested material or access to that material to the discovering party;
- (2) provide a schedule of compliance with the request for discovery; or
- (3) file a written motion with the hearing officer for relief from the request for discovery.

(c) Any dispute regarding discovery shall be referred to the hearing officer for resolution. The hearing officer shall issue an order resolving the dispute and containing the reasons for the ruling. Copies of the order shall be served on all parties.

Authority G.S. 143-546; 143B-157; 150B-2; 150B-23; 34 C.F.R. 361.48.

.0814 PRE-HEARING CONFERENCE

(a) Upon notice to all parties, the hearing officer may instruct the parties to participate in a pre-hearing conference.

(b) The conference shall be informal in nature.

(c) The conference shall be noted in the notice of hearing or in a subsequent notice if a conference is later determined to be necessary by the hearing officer.

(d) The purpose of the conference will be to discuss:

- (1) The possibility of simplification of issues,
- (2) stipulation of facts or findings,
- (3) identification of areas where evidence will be needed,
- (4) indication of discovery or subpoenas needed, and
- (5) any other matters which will reduce costs or save time or otherwise aid expeditious disposition of the case.

Authority G.S. 143-546; 143B-157; 150B-2; 150B-23; 34 C.F.R. 361.48.

.0815 SIMPLIFICATION OF ISSUES

The parties to the hearing may agree in advance to simplification of issues by:

- (1) eliminating issues to be contested at the hearing,
- (2) accepting the validity of certain proposed evidence,
- (3) accepting the findings in some other case with relevance to the case at hand, or
- (4) agreeing to such other matters as may expedite the hearing.

Authority G.S. 143-546; 143B-157; 150B-2; 150B-23; 34 C.F.R. 361.48.

.0816 EVIDENCE

(a) Evidence to be admitted in the hearing shall be specified in G.S. 150B-29, G.S. 150B-30, and G.S. 150B-31.

(b) This adoption by reference is made under G.S. 150B-14(c).

Authority G.S. 143-546; 143B-157; 150B-2; 150B-23; 150B-14(c); 150B-29; 150B-30; 150B-31; 34 C.F.R. 361.48.

.0817 DISQUALIFICATION OF HEARING OFFICER

(a) If at any time the hearing officer believes he or she cannot conduct the hearing in a fair and impartial manner, the hearing officer shall submit to the Director a written statement indicating why he or she should be disqualified from the case. Submission of the statement shall disqualify the hearing officer. The Director shall inform all parties of the disqualification and the reasons therefore.

(b) If a party to the case believes that the hearing officer of record cannot conduct a hearing in a fair and impartial manner, the party shall submit an affidavit to the hearing officer for consideration. The hearing officer shall determine the matter as part of the record in the case, and this determination shall be subject to judicial review at the conclusion of the proceeding.

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(c) When a hearing officer is disqualified or it is impractical for the hearing officer to proceed with the hearing, another hearing officer shall be assigned by the Director to proceed with the case. However, if it is shown to the Director or the newly assigned hearing officer that substantial prejudice to any party will result from continuation of the case then either:

- (1) the case shall be dismissed without prejudice; or
- (2) all or part of the case shall be repeated as necessary to substantially prevent or substantially remove the prejudice. The Director shall promptly inform all parties of the decision to assign a new hearing officer, that the case has been dismissed without prejudice, or that all or part of the case is to be repeated. Such notification shall include a statement of the reasons for the decision.

Authority G.S. 143-546; 143B-157; 150B-2; 150B-23; 34 C.F.R. 361.48.

.0818 EX PARTE COMMUNICATIONS

- (a) Ex parte communications in the appeals hearing shall be governed by G.S. 150B-35.
- (b) This adoption by reference is made under G.S. 150B-14(c).

Authority G.S. 143-546; 143B-157; 150B-2; 150B-23; 150B-35; 150B-14(c); 34 C.F.R. 361.48.

.0819 OATH

No person may testify or present views or data orally at the hearing before being put under oath or affirmation.

Authority G.S. 143-546; 143B-157; 150B-2; 150B-23; 34 C.F.R. 361.48.

.0820 CONDUCT OF HEARING

- (a) The hearing officer shall have complete control over the hearing including:
 - (1) the responsibility of having a record made of the hearing,
 - (2) the administration of oaths and affirmations,
 - (3) recognition of speakers,
 - (4) prevention of repetitious presentations, and
 - (5) general management of the hearing.
- (b) The hearing officer shall conduct the hearing in a manner that will provide the applicant or client the rights required by 34 C.F.R. 361.48(c)(2)(ii).
- (c) The hearing shall not be open to the public.

Authority G.S. 143-546; 143B-157; 150B-2; 150B-23; 34 C.F.R. 361.48.

.0821 FAILURE TO APPEAR

(a) If the applicant or client fails to appear at the hearing and does not have a representative present, the hearing officer shall cancel the hearing.

(b) The applicant or client may submit a written request for rescheduling of the hearing to the Director. The request shall provide an explanation of the individual's failure to appear at the hearing or to have a representative present. The Director may instruct the hearing officer to reschedule the hearing upon a showing of good cause by the applicant or client.

Authority G.S. 143-546; 143B-157; 150B-2; 150B-23; 34 C.F.R. 361.48.

.0822 HEARING OFFICER'S DECISION

Following the hearing, the hearing officer shall make and issue a decision as specified in 34 C.F.R. 361.48(c)(2)(iii). The decision shall be given to the applicant or client personally or by certified mail. If given by certified mail, it shall be deemed to have been given on the delivery date appearing on the return receipt.

Authority G.S. 143-546; 143B-157; 150B-2; 150B-23; 34 C.F.R. 361.48.

.0823 DIVISION DIRECTOR'S REVIEW AND FINAL DECISION

(a) The Division Director may review the hearing officer's decision and render the final decision.

(b) The Division Director's decision to review the hearing officer's decision shall be based on the following standards of review:

- (1) The hearing officer's decision shall not be arbitrary, capricious, and abuse of discretion, or otherwise unreasonable.
- (2) The hearing officer's decision shall be supported by substantial evidence, i.e. consistent with facts and applicable federal and state policy.
- (3) In reaching the decision, the hearing officer shall give appropriate and adequate interpretation to such factors as:
 - (A) the federal statute and regulations as they apply to a specific issue in question;
 - (B) the state plan as it applies to a specific issue in question;
 - (C) division procedures as they apply to a specific issue in question;
 - (D) key portions of conflicting testimony;

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- (E) division options in the delivery of services where such options are permissible under federal statute;
 - (F) restrictions in the federal statute with regard to supportive services as maintenance and transportation; and
 - (G) approved federal or division policy as it relates to an issue in question.
- (c) If the Division Director decides to review the hearing officer's decision, the Director shall send the written notification and allow the submission of additional evidence as required by 34 C.F.R. 361.48(c)(2)(iv) and (vii). The written notification shall be given to the applicant or client personally or by certified mail. If given by certified mail, it shall be deemed to have been given on the delivery date appearing on the return receipt.
- (d) Upon a determination to review the hearing officer's decision, the Division Director shall make the final decision and provide a written report thereof as required by 34 C.F.R. 361.48(c)(2)(viii) and (ix). The final decision shall be given to the applicant or client personally or by certified mail. If given by certified mail, it shall be deemed to have been given on the delivery date appearing on the return receipt.
- (e) The hearing officer's decision shall be the final decision under the conditions specified in 34 C.F.R. 361.48(c)(2)(v).
- (f) The Division Director shall forward a copy of the final decision, whether issued under (d) or (e) of this Rule, to the CAP Director, the regional rehabilitation supervisor, and the applicant's or client's representative, as appropriate. A copy shall also be included in the individual's official case record.

Authority G.S. 143-546; 143B-157; 150B-2; 150B-23; 34 C.F.R. 361.48.

.0824 EXTENSIONS OF TIME

(a) Reasonable time extensions may be granted for the procedures in these Rules for good cause at the request of a party or at the request of both parties except for:

- (1) the time for continuation of services during an administrative review as specified in Rule .0803(d) of this Section;
- (2) the time for conducting the appeals hearing as specified in Rule .0807(a) of this Section which may be extended only as specified in Rule .0807(c)(4) of this Section;
- (3) the time for issuance of the written notice of the formal appeals hearing as specified in Rule .0807(b) of this Section;

- (4) the time for the Director's notice of review as specified in Rule .0823(c) of this Section; and
 - (5) the time for the Division Director's issuance of a final decision as specified in Rule .0823(d) of this Section which may be extended only if the applicant or client requests an extension for good cause.
- (b) When an extension of time is being granted by the person conducting the administrative review or by the hearing officer, consideration shall be given to the effect of the extension of deadlines for other steps in the administrative review and appeals process.

Authority G.S. 143-546; 143B-157; 150B-2; 150B-23; 34 C.F.R. 361.48.

.0825 RECORD

- (a) The official records of appeals hearings shall be maintained in the central office of the Division.
- (b) Any person wishing to examine a hearing record shall submit a written request to the Director in sufficient time to allow the record to be prepared for inspection, including the removal of any confidential material.

Authority G.S. 143-546; 143B-157; 150B-2; 150B-23; 34 C.F.R. 361.48.

.0826 TRANSCRIPTS

Any person desiring a transcript of all or part of an appeals hearing shall contact the office of the Director. A fee to cover the cost of preparing the transcript shall be charged, and the party may be required to pay the fee in advance or receipt of the transcript. The transcript may be edited to remove confidential material.

Authority G.S. 143-546; 143B-157; 150B-2; 150B-23; 34 C.F.R. 361.48.

.0827 JUDICIAL REVIEW

Judicial review of decisions issued pursuant to Rules .0802 through .0824 of this Section shall be as specified in G.S. 150B, Article 4 with the exception of G.S. 150B-51(a) which shall not apply.

Authority G.S. 143-546; 143B-157; 150B-2; 150B-23; 34 C.F.R. 361.48.

SUBCHAPTER 19H - MEDICAL/EYE CARE PROGRAM

SECTION .0400 - HEARING

.0403 APPEAL FOR FAIR HEARING

(a) If the results of the conference are unsatisfactory, the client will be informed of his or her right to a fair hearing.

(b) The hearing will be held in accordance with 10 NCAC 10B .0201(a). All petitions for review of agency decision (G.S. 150B) will be heard by the Office of Administrative Hearings. The applicant recipient shall be notified in writing that he has the right to petition the Office of Administrative Hearings and request a fair hearing. The applicant recipient shall be instructed to contact OAH and request the specific forms which the applicant recipient must complete.

(c) The division director will make a final report based on the evidence presented at the hearing. The client or his or her representative will receive a copy of the decision. In this same written notice the applicant recipient shall be instructed that they have 60 calendar days from the date they receive the agency notice to request a fair hearing through OAH. Any petition for a contested case must be returned by the applicant recipient directly to the Office of Administrative Hearings.

Statutory Authority: G.S. 111-16; 143B-157.

TITLE 14A - DEPARTMENT OF CRIME CONTROL AND PUBLIC SAFETY

Notice is hereby given in accordance with G.S. 150B-12 that the Department of Crime Control and Public Safety, Division of Butler Public Safety intends to amend rule(s) cited as 14A NCAC 10B .0110.

The proposed effective date of this action is October 1, 1990.

The public hearing will be conducted at 10:00 a.m. on July 18, 1990 at Library, Second Floor, Archdale Building, 512 N. Salisbury Street, Raleigh, NC 27611.

Comment Procedures: Any interested person may present comments relevant to the action proposed at the public hearing either in writing or oral form. Written statements not presented at the public hearing may be directed to the hearing to Wanda D. Goodson, Administrative Procedures Coordinator, First Floor, Archdale Building, 512 N. Salisbury Street, P.O. Box 27687, Raleigh, NC 27611-7687.

CHAPTER 10 - BUTLER PUBLIC SAFETY DIVISION

SUBCHAPTER 10B - PERSONNEL REGULATIONS

SECTION .0100 - EMPLOYMENT REGULATIONS

.0110 APPLICATION PROCESS: STEP NINE: PHYSICAL EXAMINATION

(d) Applicants and lateral transferees applying for Public Safety Officer positions shall be required to take a drug test as a condition of employment during the application process but not more than 60 days prior to the date of employment as a Public Safety Officer. The sample to be tested will be collected by the Director of Medical Services at the applicant's physical examination.

(1) Applicants and lateral transferees shall be disqualified from further consideration for employment under the following circumstances:

(A) Refusal to submit to a required drug test; or
(B) A confirmed positive drug test indicating drug use prohibited by this policy.

(2) The specimen collection, testing procedures and other safeguards provided in this policy to ensure the integrity of drug testing shall be adhered to by all personnel administering drug tests. The specimen shall be collected under the supervision of the Director of Medical Services in a manner consistent with NIDA and DOT guidelines and documented on the Department's "Urine Specimen Collection Procedural Checklist" which is incorporated by reference as if fully set out herein.

(3) The sample testing or processing phase shall consist of a two-step procedure -- an initial screening test using an immunoassay testing method and a confirmation test using gas chromatography mass spectrometry (GC MS) method.

(A) When the lab receives a urine sample it will conduct an initial screening test to check for the presence of illegal drugs. This initial screening test involves using an immunoassay testing method.

(B) The drugs whose use shall be tested for shall include cannabis, cocaine, phenocyldine (PCP), opiates and amphetamines or their metabolites.

(C) The threshold levels established by the Department of Health and Human Services for Federal Workplace Drug Testing programs are hereby adopted by reference and shall automatically include any later

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- amendments and editions of said adopted matter.
- (D) The laboratory conducting the test must be certified for federal workplace drug testing programs, and must adhere to applicable federal rules, regulations and guidelines pertaining to the handling, testing, storage and preservation of samples.
- (E) Should the initial test produce a positive result for the presence of an illegal drug, the lab must perform a second test. The second screening will be performed by using the gas chromatography/mass spectrometry (GC/MS) testing method.
- (F) The laboratory will report a test result as positive if, and only if, both the initial test and the confirmation test show the presence of an illegal drug at or above the adopted threshold levels.
- (G) The laboratory will report all test results directly to the Director of Medical Services.
- (4) In order to provide, to the greatest extent possible, for the privacy and confidentiality of applicants who are required to submit to drug testing, all laboratory results will be sent directly to the Director of Medical Services.
- (A) All specimens reported by the laboratory as negative will in turn be reported to BPS by the Director of Medical Services as negative.
- (B) With respect to confirmed positive results, the Director of Medical Services:
- (i) May conduct medical interviews with the applicant;
 - (ii) May review the applicant's medical histories or any other biomedical factors;
 - (iii) Shall review all medical records made available by the applicant when a confirmed positive could have resulted from legal prescribed medicine;
 - (iv) May deem the results scientifically insufficient for further action and declare the result to be negative based on a review of such data or facts as he may deem appropriate; and
 - (v) Report positive results to the Chief, Butner Public Safety.
- (C) The Chief, BPS shall notify an applicant who produces a positive drug test result of that fact and reject that applicant for employment as a public safety officer.
- (D) Each step in the collecting and processing of the urine specimens shall be documented to establish procedural integrity and the chain of custody.
- (E) Where a positive result is confirmed, urine specimens shall be maintained by the laboratory in secured, refrigerated storage for an indefinite period.
- (F) A positive result which the Director of Medical Services justifies by appropriate medical or scientific documentation to account for the result as other than the intentional ingestion of an illegal drug will be reported as a negative result and may not be released for purposes of identifying illegal drug use. Records of the Director of Medical Services shall be released only to the Department of Crime Control and Public Safety and the Butner Public Safety Division, and when necessary, to the North Carolina Criminal Justice Education and Training Standards Commission.
- (G) All records and information of personnel actions taken on applicants with verified positive test results will be maintained in accordance with state and BPS policy and procedures.
- (e) (4) After the BPS Medical Services Director has completed the examination, he shall recommend to the chief whether the applicant should be accepted or rejected.

Statutory Authority G.S. 122C-408; 143B-10.

TITLE 15A - DEPARTMENT OF ENVIRONMENT, HEALTH, AND NATURAL RESOURCES

Notice is hereby given in accordance with G.S. 150B-12 that the Division of Environmental Management (Environmental Management Commission) intends to amend rule(s) cited as 15A NCAC 2B .0101, .0104, .0202, .0211, and .0301.

A fiscal note has been issued and a copy is available from the agency.

The proposed effective date of this action is March 1, 1991.

The public hearing will be conducted at:

August 15, 1990
2:00 p.m.
Ground Floor Hearing Room
Archdale Building
512 N. Salisbury Street
Raleigh, NC

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August 16, 1990
7:00 p.m.
Auditorium
Montgomery Comm. College
Old Biscoe Road
Troy, NC

August 20, 1990
7:00 p.m.
Medlin Campus Center
Level 1
Guilford Tech. Comm. College
Jamestown, NC

August 21, 1990
7:00 p.m.
Auditorium
Western Piedmont Comm. College
1001 Burkemont Avenue
Morganton, NC

August 22, 1990
7:00 p.m.
Humanities Lecture Hall
UNC-Asheville
Asheville, NC

August 23, 1990
7:00 p.m.
Tri-County Comm. College
Murphy, NC

August 27, 1990
7:00 p.m.
Courtroom
New Chowan County Courthouse
South Broad Street
Edenton, NC

August 28, 1990
7:00 p.m.
Bryan Auditorium, Morton Hall
UNC-Wilmington
601 South College Road
Wilmington, NC

Comment Procedures: Notice is hereby given of a public hearing to be held by the North Carolina Department of Environment, Health, and Natural Resources on behalf of the Environmental Management Commission (EMC) concerning modifications to water quality standards and classifications rules for surface water supply watershed protection as follows: To receive public comment on the proposals to modify surface water supply watershed protection

standards and classifications rules (Title 15A NCAC 2B .0100, .0200 and .0300). The 1989 North Carolina General Assembly ratified House Bill 156 (Water Supply Watershed Protection Act, G.S. 143-214.5) establishing a cooperative program to protect and enhance the quality of the State's surface water supplies. A 19 member Water Supply Watershed Protection Advisory Council consisting of representatives of state and local government, special interest groups such as the building community and environmental groups, and individuals with expertise in water supply management assisted in the development of proposed revisions to the North Carolina surface water supply classifications and standards. These proposed revisions include requirements for both point (wastewater treatment facilities) and non-point (stormwater runoff) sources of pollution. The proposed stormwater management requirements address land use activities, best management practices (BMPs), development density controls, structural stormwater controls or a combination thereof to be administered by local government. In turn, the State regulates the number and type of point source discharges allowed within water supply watersheds. All local governments that have land use jurisdiction within surface water supply watersheds, or a portion thereof, are responsible for implementation and enforcement of the nonpoint source management requirements. THESE RULES REPRESENT A SIGNIFICANT CHANGE FROM PREVIOUS PRACTICES SINCE LOCAL GOVERNMENTS MUST ADOPT ORDINANCES TO EITHER LIMIT DEVELOPMENT DENSITY OR REQUIRE STORMWATER CONTROLS WITHIN WATER SUPPLY WATERSHEDS IN THEIR JURISDICTION. Depending on the information received at these hearings, the EMC MAY ADOPT MORE OR LESS STRINGENT REQUIREMENTS. It is therefore very important that individuals with interest in this issue make their views known (including the perceived economic and social costs and or benefits) to the EMC. Upon adoption of amendments to the standards and classifications rules, they will become effective March 1, 1991. All persons interested in this matter are invited to attend. Comments, data, statements and other information may be submitted in writing prior to, during or within thirty (30) days after the hearing or may be presented orally at the hearings. So that all persons desiring to speak may do so, statements may be limited to three minutes at the discretion of the hearing officer. The statutory authority authority for these actions is as follows: N.C. General Statutes 143-214.1, 143-215.3(a)(1) and (3). Further information on the final proposals

may be obtained by writing or calling: Stephen Zoufaly; Division of Environmental Management; P.O. Box 27687; Raleigh, North Carolina 27611; (919) 733-5083.

CHAPTER 2 - ENVIRONMENTAL MANAGEMENT

SUBCHAPTER 2B - SURFACE WATER STANDARDS: MONITORING

SECTION .0100 - PROCEDURES FOR ASSIGNMENT OF WATER QUALITY STANDARDS

.0101 GENERAL PROCEDURES

(c) Freshwater Classifications.

- (3) Class WS-I; protected as water supplies which are in natural and uninhabited watersheds; no point source discharges of wastewater are permitted; local nonpoint source control programs to control non-point sources of pollution are required;
- (4) Class WS-I, WS-II; waters protected as water supplies which are in natural and uninhabited or predominantly undeveloped (not urbanized) watersheds; no point source discharges of wastewater are permitted, except those discharges existing discharge qualifying at the time of reclassification which qualify for a General Permit according pursuant to the requirements of 15A NCAC 2H .0134 211 .0127 specifically approved by the Commission at the time of classification; and local land management nonpoint source control programs to control nonpoint source pollution are required; local governments may utilize engineered stormwater controls for additional protection as long as density limits of this classification are not exceeded and, in such cases, they assume ultimate responsibility for operation and maintenance of as outlined in Rule .0104(f) of this Subchapter; suitable for all Class C uses;
- (5) Class WS-II, WS-III; waters protected as water supplies which are generally in low to moderately developed (urbanized) watersheds; discharges are restricted to a limited number of treated domestic wastewater (sewage) or industrial non-process waters specifically approved by the Commission; no new discharges in critical area; local land management nonpoint source control programs to control nonpoint source pollution are required; if local governments choose to allow development requiring engineered stormwater controls, then they will assume ultimate responsibility for operation and maintenance of the required controls as outlined in Rule .0104(f) of this Subchapter; suitable for all Class C uses;
- (6) Class WS-III; water supply segment with no categorical restrictions on watershed development or discharges; Class WS-IV; waters protected as water supplies which are generally in moderately to highly developed watersheds; discharges are restricted to a limited number of treated domestic (sewage) or industrial wastewater discharges; no new industrial discharges in critical area; local nonpoint source control programs to control non-point source pollution are required; if local governments choose to allow development requiring engineered stormwater controls, then they will assume ultimate responsibility for operation and maintenance of the required controls as outlined in Rule .0104(f) of this Subchapter; suitable for all Class C uses;

Statutory Authority G.S. 143-214.1; 143-215.3(a)(1).

.0104 CONSIDERATIONS IN ASSIGNING WATER SUPPLY CLASSIFICATIONS

(a) In determining the suitability of waters for use as a source of water supply for drinking, culinary or food processing purposes after approved treatment, the Commission will be guided by the physical, chemical, and bacteriological maximum contaminant levels specified by Environmental Protection Agency regulations adopted pursuant to the Public Health Service Act, 42 U.S.C. 201 et seq., as amended by the Safe Drinking Water Act, 42 U.S.C. 300(f) et seq. In addition, the Commission will be guided by the requirements for unfiltered and filtered water supplies and the maximum contaminant levels specified in the North Carolina Rules Governing Public Water Supplies, 10 NCAC 10D .1200, .1300 and .1600 and comments provided by the Division of Health Services, Environmental Health.

(b) In considering the reclassification of waters as Class WS-I, the Commission will evaluate local land use management programs to protect the quality of these waters from nonpoint sources of pollution. Local land use management programs and modifications to these programs must be approved by the Commission and will be kept on file by the Division of Environmental Management and Division of Health Services. Waters formerly classified as A-1 will be considered to be protected as required for unfiltered water supplies by the Commission of Health Services (10

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~~NCAC 10D .1200~~ until alternative plans are submitted for approval. All local governments that are determined by the Commission to have land use authority within water supply watersheds and protected areas of Class WS-IV water supplies will adopt and enforce ordinances that at a minimum meet the requirements of G.S. 143-214.5 and this Subchapter. Local governments may adopt and enforce more stringent controls. Local management programs and modifications to these programs must be approved by the Commission and will be kept on file by the Division of Environmental Management, Division of Environmental Health and the Division of Community Assistance. In considering the reclassification of waters for water supply purposes the Commission will evaluate local land use management programs in order to protect the quality of these waters from existing and future point and nonpoint sources of pollution.

(c) In considering the reclassification of waters ~~in Class WS-II~~ the Commission will evaluate local land use management programs to protect the quality of these waters from existing and future nonpoint sources of pollution. Local management programs and modifications to these programs must be approved by the Commission and will be kept on file by the Division of Environmental Management and Division of Health Services. All waters used for water supply purposes shall be classified to the most appropriate water supply classification as determined by the Commission.

(d) In considering the reclassification of waters ~~in Class WS-III~~ for water supply purposes, the Commission will take into consideration the relative proximity, quantity, composition, natural dilution and diminution of potential sources of pollution to determine that risks posed by all significant pollutants are adequately considered.

(e) The construction of new roads and bridges and non-residential development should minimize built-upon area, divert stormwater away from surface water supply waters as much as possible, and employ best management practices to minimize water quality impacts. To the extent practicable, the construction of new roads in the critical area should be avoided.

(f) Wherever in this Subchapter it is provided that local governments assume responsibility for operation and maintenance of engineered stormwater controls (controls), this shall be construed to require responsible local governments to inspect such controls at least once per year, to determine whether the controls are performing as designed and intended. Records of inspections shall be maintained on forms approved or sup-

plied by the Division. Local governments may require payment of reasonable inspection fees by entities which own the controls, as authorized by law. In the event inspection shows that a control is not performing adequately, the local government shall order the owning entity to take corrective actions. If the entity fails to take sufficient corrective actions, the local government may impose civil penalties and pursue other available remedies in accordance with law. The availability of new engineered stormwater controls as an alternative to lower development density and other measures under the provisions of this Subchapter and local ordinances approved by the Commission shall be conditioned on the posting of adequate financial assurance, in the form of a cash deposit with or bond made payable to the responsible local government, or other acceptable security. The establishment of a stormwater utility by the responsible local government shall be deemed adequate financial assurance. The purpose of the required financial assurance is to assure that maintenance, repairs or reconstruction necessary for adequate performance of the controls may be made by the owning entity or the local government which may choose to assume ownership and maintenance responsibility.

(g) Where no practicable alternative exists, discharge from groundwater remediation projects addressing water quality problems will be allowed in all water supply classifications.

(h) To further the cooperative nature of the water supply watershed management and protection program provided for herein, local governments with jurisdiction over portions of classified watersheds and local governments which derive their water supply from within such watersheds are encouraged to establish joint water quality monitoring and information sharing programs, by interlocal agreement or otherwise. Such cooperative programs shall be established in consultation with the Division.

Statutory Authority G.S. 143-214.1; 143-215.3(a)(1).

SECTION .0200 - CLASSIFICATIONS AND WATER QUALITY STANDARDS APPLICABLE TO SURFACE WATERS OF NORTH CAROLINA

.0202 DEFINITIONS

The definition of any word or phrase used in these rules shall be the same as given in Article 21, Chapter 143 of the General Statutes of North Carolina. The following words and phrases, which are not defined in this article, will be interpreted as follows:

(I) Acute toxicity to aquatic life means lethality or other harmful effects sustained by either resident aquatic populations or indicator species used as test organisms in a controlled toxicity test due to a short-term exposure (relative to the life cycle of the organism) to a specific chemical or mixture of chemicals (as in an effluent). Short-term exposure for acute tests is generally 96 hours or less. Acute toxicity will be determined using the most appropriate of the following procedures:

- (a) for specific chemical constituents or compounds, acceptable levels will be equivalent to a concentration of one-half or less of the Final Acute Value (FAV) as determined according to "Guidelines for Deriving Numerical Water Quality Criteria for the Protection of Aquatic Life and its Uses" published by the Environmental Protection Agency and referenced in the Federal Register (50 FR 30784, July 29, 1985).
 - (b) for specific chemical constituents or compounds, acceptable levels will be equivalent to a concentration of one-third or less of the lowest available LC50 value.
 - (c) for effluents, acceptable levels are defined as no statistically measurable lethality (99 percent confidence level using Students t test) during a specified exposure period. Concentrations of exposure will be determined on a case-by-case basis.
 - (d) in instances where detailed dose response data indicate that acceptable levels are significantly different from those defined in this Rule, the Director may determine on a case-by-case basis an alternate acceptable level through statistical analyses of the dose response curve.
- (2) Acute to Chronic Ratio (ACR) means the ratio of acute toxicity expressed as an LC50 for a specific toxicant or an effluent to the chronic value for the same toxicant or effluent.
- (3) Agricultural uses include the use of waters for stock watering, irrigation, and other farm purposes.
- (4) Approved treatment, as applied to water supplies, means treatment accepted as satisfactory by the authorities responsible for exercising supervision over the quality of water supplies.
- (5) Average (except bacterial) means arithmetical average and includes the analytical results of all samples taken during the specified period; all sampling shall be done as to ob-

tain the most representative sample under prevailing conditions:

- (a) Daily Average for dissolved oxygen, shall be of at least four samples;
- (b) Weekly Average means the average of all daily composite samples obtained during the calendar week; if only one grab sample is taken each day, the weekly average is the average of all daily grab samples; a minimum of three daily grab samples is needed to calculate a weekly average;
- (c) Monthly Average means the average of all daily composites (or grab samples if only one per day) obtained during the calendar month.

The definitions in this Paragraph do not affect the monitoring requirements for NPDES permits but rather are to be used by the Division along with other methodologies in determining violations of water quality standards. Arithmetical averages as defined by this Rule, and not confidence limits nor other statistical descriptions, will be used in all calculations of limitations which require the use of averages pursuant to this Rule and 40 CFR 122.41(l)(4)(iii).

- (6) Best Management Practice (BMP) means a structural or nonstructural management-based practice used singularly or in combination to reduce nonpoint source inputs to receiving waters in order to achieve water quality protection goals.
- (7) Best usage of waters as specified for each class means those uses as determined by the Environmental Management Commission in accordance with the provisions of Article 21, Chapter 143-214.1, General Statutes of North Carolina.
- (8) Bioaccumulative means substances which are taken up, concentrated, and retained by an organism from its environment.
- (9) Buffer means an area of natural or planted vegetation through which stormwater runoff flows in a diffuse manner so that the runoff does not become channelized and which provides for infiltration of the runoff and filtering of pollutants.
- (10) Built-upon area means that portion of a development project that is covered by impervious or partially impervious cover including buildings, pavement, gravel roads, recreation facilities (e.g. tennis courts), etc. (Note: the water area of a swimming pool is considered pervious.)
- (11) ~~(9)~~ Chronic toxicity to aquatic life means any harmful effect sustained by either resident aquatic populations or indicator species

- used as test organisms in a controlled toxicity test due to long-term exposure (relative to the life cycle of the organism) or exposure during a substantial portion of the duration of a sensitive period of the life cycle to a specific chemical substance or mixture of chemicals (as in an effluent). In absence of extended periods of exposure, early life stage or reproductive toxicity tests may be used to define chronic impacts.
- (12) ~~(10)~~ Chronic value for aquatic life means the geometric mean of two concentrations identified in a controlled toxicity test as the No Observable Effect Concentration (NOFC) and the Lowest Observable Effect Concentration (LOFC).
- (13) ~~(11)~~ Concentrations are the mass of a substance per volume of water and for the purposes of this Section will be expressed as milligrams per liter (mg l), micrograms per liter (ug l), or nanograms per liter (ng l).
- (14) Critical area means the area adjacent to a water supply intake or reservoir where risk associated with pollution is greater than from the remaining portions of the watershed. The critical area is defined as extending either 1/2 mile from the normal pool elevation of the reservoir in which the intake is located or to the ridge line of the watershed (whichever comes first); or one mile upstream from the intake located directly in the stream or river (run-of-the-river), or to the ridge line of the watershed (whichever comes first). Since WS-I watersheds are uninhabited and undeveloped, establishment of a critical area is not required. Local governments may extend the critical area as needed. Major landmarks such as highways may be used to delineate the outer boundary of the critical area if these landmarks are immediately adjacent to the appropriate outer boundary of 1/2 or one mile.
- (15) ~~(12)~~ Designated Nonpoint Source Agency means those agencies specified by the Governor in the North Carolina Nonpoint Source Management Program, as approved by the Environmental Protection Agency.
- (16) Development means any land disturbing activity which adds to or changes the amount of impervious or partially impervious cover on a land area or which otherwise decreases the infiltration of precipitation into the soil thus altering the hydrological characteristics of the area.
- (17) ~~(13)~~ Discharge is the addition of any man-induced waste effluent either directly or indirectly to state surface waters.
- (18) ~~(11)~~ Division means the Division of Environmental Management or its successors.
- (19) Domestic discharge means the discharge of treated primarily human wastewater (sewage); non-process industrial wastewater is also classified as domestic wastewater unless excepted by the Director.
- (20) ~~(15)~~ Effluent channel means a discernable confined and discrete conveyance which is used for transporting treated wastewater to a receiving stream or other body of water as provided in Rule .0215 of this Section.
- (21) ~~(16)~~ Existing uses mean uses actually attained in the water body, in a significant and not incidental manner, on or after November 28, 1975, whether or not they are included in the water quality standards, which either have been actually available to the public or are uses deemed attainable by the Environmental Management Commission. At a minimum, uses shall be deemed attainable if they can be achieved by the imposition of effluent limits and cost-effective and reasonable best management practices (BMPs) for nonpoint source control.
- (22) ~~(17)~~ Fishing means the taking of fish by sport or commercial methods as well as the consumption of fish or shellfish or the propagation of fish and such other aquatic life as is necessary to provide a suitable environment for fish.
- (23) ~~(18)~~ Freshwater means all waters that under natural conditions would have a chloride ion content of 500 mg l or less.
- (24) Hazardous material means any substance listed as such in: SARA section 302, Extremely Hazardous Substances; CERCLA, Hazardous Substances; or Section 311 of CWA (oil and hazardous substances).
- (25) Industrial discharge means the discharge of industrial process treated wastewater or wastewater other than sewage and includes:
- wastewater resulting from any process of industry or manufacture, or from the development of any natural resource;
 - wastewater resulting from processes of trade or business, including wastewater from laundromats and car washes, but not wastewater from restaurants;
 - stormwater will not be considered to be an industrial wastewater unless it is contaminated with industrial wastewater; or
 - wastewater discharged from a municipal wastewater treatment plant requiring a pretreatment program.
- (26) ~~(19)~~ LC50 means that concentration of a toxic substance which is lethal (or immobilizing, if appropriate) to 50 percent

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- of the organisms tested during a specified exposure period. The LC50 concentration for toxic materials shall be determined for appropriate sensitive species under aquatic conditions characteristic of the receiving waters.
- (27) Local government means a city or county in singular or plural as defined in G.S. 160A-1(2) and G.S. 158A-10.
- (28) ~~(20)~~ Lower piedmont and coastal plain waters mean those waters of the Catawba River Basin below Lookout Shoals Dam; the Yadkin River Basin below the junction of the Forsyth, Yadkin, and Davie County lines and all of the waters of Cape Fear; Lumber; Roanoke; Neuse; Tar-Pamlico; Chowan; Pasquotank; and White Oak River Basins, except tidal salt waters which are assigned S classifications.
- (29) ~~(21)~~ MF is an abbreviation for the membrane filter procedure for bacteriological analysis.
- (30) ~~(22)~~ Mixing zone means a region of the receiving water in the vicinity of a discharge within which dispersion and dilution of constituents in the discharge occurs and such zones shall be subject to conditions established in accordance with 15A NCAC 2B .0204(b).
- (31) ~~(23)~~ Mountain and upper piedmont waters mean all of the waters of the Hiwassee; Little Tennessee, including the Savannah River drainage area; French Broad; Broad; New; and Watauga River Basins and those portions of the Catawba River Basin above Lookout Shoals Dam and the Yadkin River Basin above the junction of the Forsyth, Yadkin, and Davie County lines.
- (32) ~~(24)~~ Nonpoint source pollution means pollution which enters waters mainly as a result of precipitation and subsequent runoff from lands which have been disturbed by man's activities and includes all sources of water pollution which are not required to have a permit in accordance with G.S. 143-215.1(e).
- (33) Non-process discharge means industrial effluent not directly resulting from the manufacturing process. An example would be non-contact cooling water from a compressor.
- (34) ~~(25)~~ Nutrient sensitive waters mean those waters which are so designated in the classification schedule in order to limit the discharge of nutrients (usually nitrogen and phosphorus). They are designated by "NSW" following the water classification.
- (35) Protected area means the area adjoining and upstream of the critical area in a WS-IV water supply watershed in which protection measures are required. The boundaries of the protected areas are delineated on a case-by-case basis, considering watershed size, stream flow, land use characteristics and other appropriate factors.
- (36) ~~(26)~~ Offensive condition means any condition or conditions resulting from the presence of sewage, industrial wastes or other wastes within the waters of the state or along the shorelines thereof which shall either directly or indirectly cause foul or noxious odors, unsightly conditions, or breeding of abnormally large quantities of mosquitoes or other insect pests, or shall damage private or public water supplies or other structures, result in the development of gases which destroy or damage surrounding property, herbage or grasses, or which may cause the impairment of taste, such as from fish flesh tainting, or affect the health of any person residing or working in the area.
- (37) ~~(27)~~ Primary Nursery Areas (PNAs) are tidal saltwaters which provide essential habitat for the early development of commercially important fish and shellfish and are so designated by the Marine Fisheries Commission.
- (38) ~~(28)~~ Primary recreation includes swimming, skin diving, skiing, and similar uses involving human body contact with water where such activities take place in an organized or on a frequent basis.
- (39) Residential development means buildings for residence such as attached and detached single family dwellings, apartment complexes, condominiums, townhouses, cottages, etc. and their associated outbuildings such as garages, storage buildings, gazebos, etc.
- (40) ~~(29)~~ Secondary recreation includes wading, boating, other uses not involving human body contact with water, and activities involving human body contact with water where such activities take place on an infrequent, unorganized, or incidental basis.
- (41) ~~(30)~~ Sensitive species for aquatic toxicity testing is any species utilized in procedures accepted by the Commission or its designee in accordance with Rules .0211(b)(3)(1.) or .0212(b)(3)(L) of this Section, or the following genera:
- Daphnia;
 - Ceriodaphnia;
 - Salmo;
 - Pimephales;

- (e) Mysidopsis;
- (f) Champia;
- (g) Cyprinodon;
- (h) Arbacia;
- (i) Penaeus;
- (j) Menidia;
- (k) Notropis;
- (l) Salvelinus;
- (m) Oncorhynchus;
- (n) Selenastrum.

Other genera may be accepted by the Commission or its designee on a case-by-case basis.

(42) (34) Shellfish culture includes the use of waters for the propagation, storage and gathering of oysters, clams, and other shellfish for market purposes.

(43) Sludge residuals means any solid or semi-solid waste generated from a wastewater treatment plant, water treatment plant or air pollution control facility permitted under the authority of the Environmental Management Commission.

(44) (32) Source of water supply for drinking, culinary or food-processing purposes means any source, either public or private, the waters from which are used for human consumption, or used in connection with the processing of milk, beverages, food, or other purpose which requires water meeting the Maximum Contaminant Levels (MCLs) in the North Carolina Rules Governing Public Water Supplies, 10 NCAC 10D .1600 as well as MCLs promulgated by the Environmental Protection Agency pursuant to the Public Health Service Act, 42 U.S.C. 201 et seq., as amended by the Safe Drinking Water Act, 42 U.S.C. 300(f) (g)-1 et seq.

(45) (33) Swamp waters mean those waters which are classified by the Environmental Management Commission and which are topographically located so as to generally have very low velocities and certain other characteristics which are different from adjacent streams draining steeper topography. They are designated by "Sw" following the water classification.

(46) (34) Tidal salt waters mean all tidal waters which are classified by the Environmental Management Commission which generally have a natural chloride ion content in excess of 500 parts per million and include all waters assigned S classifications.

(47) (35) Toxic substance or toxicant means any substance or combination of substances (including disease-causing agents), which after discharge and upon exposure, ingestion, inhalation, or assimilation into any

organism, either directly from the environment or indirectly by ingestion through food chains, has the potential to cause death, disease, behavioral abnormalities, cancer, genetic mutations, physiological malfunctions (including malfunctions or suppression in reproduction or growth) or physical deformities in such organisms or their offspring or other adverse health effects.

(48) (36) Trout waters are those waters which have conditions which will sustain and allow for trout propagation and survival of stocked trout on a year-round basis. These waters are classified by the Commission after considering the requirements of Rule .0101(b) and (c) of this Subchapter and include all waters designated by "Tr" in the water classification.

(49) (37) Waste disposal includes the use of waters for disposal of sewage, industrial waste or other waste after approved treatment.

(50) (38) Water quality based effluent limits and best management practices are limitations or best management practices developed by the Division for the purpose of protecting water quality standards and best usage of surface waters consistent with the requirements of General Statute 143-214.1 and the Federal Water Pollution Control Act as amended.

(51) (39) Waters with quality higher than the standards means all waters for which the determination of waste load allocations (pursuant to Rule .0206 of this Section) indicates that water quality is sufficiently greater than that defined by the standards such that significant pollutant loading capacity still exists in those waters.

(52) Watershed means the entire land area contributing surface drainage to a specific point.

Statutory Authority *G.S.* *143-214.1; 143-215.3(a)(1).*

.0211 FRESH SURFACE WATER CLASSIFICATIONS AND STANDARDS

(c) Class WS-I Waters.

(1) Best Usage of Waters. Source of water supply for drinking, culinary, or food-processing purposes for those users desiring maximum protection of their water supplies, and any other best usage specified for Class C waters;

(2) Conditions Related to the Best Usage. Waters of this class are protected water supplies within natural and uninhabited

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or predominantly undeveloped (~~not urbanized~~) watersheds with no permitted point source discharges ~~except those existing discharges qualifying for a General Permit according to the requirements of 15A NCAC 2H .0134 specifically approved by the Commission at the time of classification~~; waters within this class must be relatively unimpacted by nonpoint sources of pollution; local land use management programs are required to protect waters from nonpoint source pollution; silviculture and agriculture activities are allowed and are required to employ Best Management Practices (BMPs) [as delineed by Rule .0202(6) of this Section] recommended by the Designated Nonpoint Source Agency [as defined by Rule .0202(15) of this Section] to the extent State cost share funds and technical assistance are available; ~~watersheds must be protected and~~ the waters, following treatment required by the Division of Health Services, Environmental Health, will meet the maximum contaminant levels concentrations considered safe for drinking, culinary, and food-processing purposes which are specified in the national drinking water regulations and in the North Carolina Rules Governing Public Water Supplies, 10 NCAC 10D .1600; sources of water pollution which preclude any of these uses on either a short-term or long-term basis will be considered to be violating a water quality standard;

- (3) Quality Standards Applicable to Class WS-I Waters:
- (A) Nonpoint Source Pollution: ~~only that pollution which will not none that would~~ adversely impact the waters for use as a water supply or any other designated use;
 - (B) Organisms of coliform group: total coliforms not to exceed 50/100 ml (MF count) as a monthly geometric mean value in watersheds serving as unfiltered water supplies;
 - (C) Phenolic compounds: not greater than 1.0 ug/l (phenols) to protect water supplies from taste and odor problems from chlorinated phenols;
 - (D) Sewage, industrial wastes: none; ~~except those specified in Subparagraph (2) of this Paragraph~~;
 - (E) Solids, total dissolved: not greater than 500 mg/l;
 - (F) Total hardness: not greater than 100 mg/l as calcium carbonate;
 - (G) Toxic and other deleterious substances:

(i) Water quality standards (maximum permissible levels) ~~concentrations~~ to protect human health through water consumption and fish tissue consumption for non-carcinogens in Class WS-I waters:

- (I) Barium: 1.0 mg/l;
- (II) Chloride: 250 mg/l;
- (III) Manganese: 50 ug/l;
- (IV) Nickel: 25 ug/l;
- (V) Nitrate nitrogen: 10.0 mg/l;
- (VI) 2,4-D: 100 ug/l;
- (VII) 2,4,5-TP (Silvex): 10 ug/l;
- (VIII) Sulfates: 250 mg/l.

(ii) Water quality standards (maximum permissible levels) ~~concentrations~~ to protect human health through water consumption and fish tissue consumption for carcinogens in Class WS-I waters:

- (I) Beryllium: 6.8 ng/l;
- (II) Benzene: 1.19 ug/l;
- (III) Carbon tetrachloride: 0.254 ug/l;
- (IV) Chlorinated benzenes: 488 ug/l;
- (V) Dioxin: 0.000013 ng/l;
- (VI) Hexachlorobutadiene: 0.445 ug/l;
- (VII) Polynuclear aromatic hydrocarbons: 2.8 ng/l;
- (VIII) Tetrachloroethane (1,1,2,2): 0.172 ug/l;
- (IX) Tetrachloroethylene: 0.8 ug/l;
- (X) Trichloroethylene: 3.08 ug/l;
- (XI) Vinyl Chloride: 2 ug/l;
- (XII) Aldrin: 0.127 ng/l;
- (XIII) Chlordane: 0.575 ng/l;
- (XIV) DDT: 0.588 ng/l;
- (XV) Dieldrin: 0.135 ng/l;
- (XVI) Heptachlor: 0.208 ng/l.

(d) Class WS-II Waters.

- (1) Best Usage of Waters. Source of water supply for drinking, culinary, or food-processing purposes for those users desiring maximum protection for their water supplies where a WS-I classification is not ~~attainable feasible~~ and any ~~other~~ best usage specified for Class C waters; ~~this classification may also be used to protect critical portions of the watershed of Class WS-III waters~~.
- (2) Conditions Related to Best Usage. Waters of this class are protected as water supplies which are in ~~low to moderately developed (urbanized)~~ watersheds; ~~only domestic wastewater discharges (excluding municipal dischargers required to have a pre-treatment program according to 15A NCAC 2H .0904) and industrial non-process discharges predominantly unde-~~

- veloped with no permitted point source discharges of wastewater except those discharges existing at the time of reclassification which qualify for a General Permit pursuant to the requirements of 15A NCAC 211 .0127 specifically approved by the EMC are permitted in these watersheds; Commission; local governments must have land use management programs to protect these watersheds from pollution due to land development and other nonpoint sources; will encourage participation in the Agricultural Cost Share Program and will be aware of and, as the existing laws allow, develop, implement, and enforce a comprehensive nonpoint source control program to reduce water pollution from activities within the watershed such as commercial and residential development, forestry, landfills, mining, on-site sanitary sewage systems which utilize ground adsorption, toxic and hazardous materials, transportation, and water based recreation; the waters, following treatment required by the Division of Health Services Environmental Health, will meet the maximum contaminant levels concentrations considered safe for drinking, culinary, and food-processing purposes which are specified in the national drinking water regulations and in the North Carolina Rules Governing Public Water Supplies, 10 NCAC 10D .1600; sources of water pollution which preclude any of these uses on either a short-term or long-term basis will be considered to be violating a water quality standard; Class WS-II may be used to protect tributaries (and headwaters thereof, as necessary) within critical areas of Class WS-III, and WS-IV waters;
- (3) Quality Standards Applicable to Class WS-II Waters:
- (A) Sewage and Industrial Wastes: none except for non process industrial discharge specifically approved by the Commission; those specified in Subparagraph (2) of this Paragraph;
- (B) Nonpoint Source Pollution: only that pollution which will not none that would adversely impact the waters for use as a water supply or any other designated use;
- (i) Nonpoint Source Pollution Control Criteria For Entire Watershed:
- (1) Residential development must be limited to one dwelling unit per two acres or six percent built-upon area on average in the watershed; if local

government desires additional protection for development (ex. clustering or existing development) then engineered stormwater controls (wet detention ponds) may be employed and shall control the runoff from the first inch of rainfall; this shall not be used to supersede the density limit of one dwelling unit per two acres or six percent built-upon area;

(II) Land within the watershed will be deemed compliant with the density requirements if the following two conditions are met:

(la) The density of all existing and platted development meets the density requirement when densities are averaged throughout the entire watershed area at the time of classification;

(lb) All new development meets this density requirement on a project by project basis;

(III) Clustering of development is allowed outside of critical area on a project basis with the following conditions:

(la) Overall density of the project meets associated density or stormwater control requirements;

(lb) Built-upon areas may only occur in upland areas of projects that are not immediately adjacent to water supply waters;

(lc) Remainder of tract to remain in vegetated or natural state;

(IV) Non-residential development may occupy a maximum of ten percent of total watershed area outside of the critical area; in order to maintain overall density, built-upon area for non-residential development shall not exceed 70 percent maximum on a project basis; to the maximum extent practicable, non-residential development should minimize built-upon surfaces, direct stormwater away from surface waters and employ best management practices to minimize water quality impacts;

(V) If local governments choose to allow development requiring engineered stormwater controls, then they will assume ultimate responsibility for operation and maintenance of the required controls as outlined in Rule .0104(f) of this Subchapter;

- (VI) Vegetative buffer will be maintained adjacent to all perennial tributaries; width to be determined by adding 50 feet to four times the percent slope;
- (VII) No permanent structures will be built in the vegetative buffer;
- (VIII) Maintain inventory of all hazardous materials used and stored in the watershed; spill/failure containment plan and appropriate safeguards against contamination are required; appropriate recycling of materials is encouraged;
- (IX) No land application of sludge/residuals is allowed;
- (X) No new discharging landfills are allowed;
- (XI) Non-discharging systems allowed but only in cases where the treated wastewater originates within the watershed;
- (ii) Critical Area Nonpoint Source Pollution Control Criteria:
- (I) No new sewer lines are allowed;
- (II) No new industrial development is allowed;
- (III) Minimum 100 foot vegetative buffer landward from normal pool elevation around reservoir, or greater, depending upon soil type and slope; stream or river used as direct intake will have minimum 100 foot vegetative buffer landward from stream bank for a distance of 1/2 mile if watershed comprises less than 100 square miles otherwise one mile upstream; if 50 plus four times the percent slope is greater than 100 feet then this value must be used as the width of the buffer;
- (IV) No engineered stormwater controls are allowed;
- (V) No new cluster type development is allowed;
- (VI) No new landfills are allowed;
- (VII) No hazardous materials use or storage is allowed;
- (C) Odor producing substances contained in sewage or other wastes: only such amounts, whether alone or in combination with other substances or wastes, as will not cause: taste and odor difficulties in water supplies which cannot be corrected by treatment, impair the palatability of fish, or have a deleterious effect upon any best usage established for waters of this class;
- (D) Phenolic compounds: not greater than 1.0 ug/l (phenols) to protect water supplies from taste and odor problems due to chlorinated phenols;
- (E) Sewage: none which will have an adverse effect on human health or is not effectively treated to the satisfaction of the Commission and in accordance with the requirements of the Division of Health Services, Environmental Health, North Carolina Department of Human Resources, Environment, Health, and Natural Resources;
- (F) Total hardness: not greater than 100 mg/l as calcium carbonate;
- (G) Total dissolved solids: not greater than 500 mg/l;
- (H) Toxic and other deleterious substances:
- (i) Water quality standards (maximum permissible level) concentrations to protect human health through water consumption and fish tissue consumption for non-carcinogens in Class WS-II waters:
- (I) Barium: 1.0 mg/l;
- (II) Chloride: 250 mg/l;
- (III) Manganese: 200-50 ug/l;
- (IV) Nickel: 25 ug/l;
- (V) Nitrate nitrogen: 10.0 mg/l;
- (VI) 2,4-D: 100 ug/l;
- (VII) 2,4,5-TP: 10 ug/l;
- (VIII) Sulfates: 250-250 mg/l;
- (ii) Water quality standards (maximum permissible level) concentrations to protect human health through water consumption and fish tissue consumption for carcinogens in Class WS-II waters:
- (I) Beryllium: 6.8 ng/l;
- (II) Benzene: 1.19 ug/l;
- (III) Carbon tetrachloride: 0.254 ug/l;
- (IV) Chlorinated benzenes: 488 ug/l;
- (V) Dioxin: 0.000013 ng/l;
- (VI) Hexachlorobutadiene: 0.445 ug/l;
- (VII) Polynuclear aromatic hydrocarbons: 2.8 ng/l;
- (VIII) Tetrachloroethane (1,1,2,2): 0.172 ug/l;
- (IX) Tetrachloroethylene: 0.8 ug/l;
- (X) Trichloroethylene: 3.08 ug/l;
- (XI) Vinyl Chloride: 2 ug/l;
- (XII) Aldrin: 0.127 ng/l;
- (XIII) Chlordane: 0.575 ng/l;
- (XIV) DDT: 0.588 ng/l;
- (XV) Dieldrin: 0.135 ng/l;
- (XVI) Heptachlor: 0.208 ng/l;
- (e) Class WS-III Waters.

PROPOSED RULES

- (1) Best Usage of Waters. Source of water supply for drinking, culinary, or food-processing purposes for those users where a more protected sources are protective WS-I or WS-II classification is not feasible and any other best usage specified for Class C waters;
- (2) Conditions Related to Best Usage. Waters of this class are protected as water supplies which are generally in low to moderately developed watersheds with a limited number of domestic wastewater discharges (excluding municipal discharges required to have a pretreatment program according to 15A NCAC 211 .0904) and industrial non-process discharges specifically approved by the Commission; no new discharges in critical area; local governments will encourage participation in the Agricultural Cost Share Program and will be aware of and, as the existing laws allow, develop, implement, and enforce a comprehensive nonpoint source control program to reduce water pollution from activities within the watershed such as commercial and residential development, forestry, landfills, mining, onsite sanitary sewage systems which utilize ground adsorption, toxic and hazardous materials, transportation, and water based recreation; the waters, after following treatment required by the Division of Health Services, Environmental Health, will meet the maximum contaminant levels concentrations considered safe for drinking, culinary, or food-processing purposes which are specified in the national drinking water regulations and in the North Carolina Rules Governing Public Water Supplies, 10 NCAC 10D .1600; sources of water pollution which preclude any of these uses on either a short-term or long-term basis will be considered to be violating a water quality standard; Class WS-III may be used to protect tributaries (and headwaters thereof, as necessary) within critical areas of Class WS-IV;
- (3) Quality Standards Applicable to Class WS-III Waters:
- (A) Industrial Wastes: none except for those non-process industrial discharges specifically approved by the Commission;
- (B) Nonpoint Source Pollution: none that would adversely impact the waters for use as water supply or any other designated use;
- (i) Nonpoint Source Pollution Control Criteria for Entire Watershed:
- (I) Residential development must be limited to one dwelling unit per acre or twelve percent built-upon on average in watershed outside of the critical area;
- (II) Land within the watershed will be deemed compliant with the density requirements if the following two conditions are met:
- (Ia) The density of all existing and platted development meets the density requirement when densities are averaged throughout the entire watershed area;
- (Ib) All new development meets these density requirement on a project by project basis;
- (III) Clustering of development allowed outside of critical area on a project basis as follows:
- (Ia) Overall density of the project meets associated density or stormwater control requirements;
- (Ib) Built-upon areas may only occur in upland area of project that is not immediately adjacent to water supply waters;
- (Ic) Remainder of tract to remain in vegetated or natural state;
- (IV) If new development exceeds one dwelling unit per acre or twelve percent built-upon then development must control runoff from the first inch of rainfall; development not to exceed 30 percent built-upon area;
- (V) Non-residential development may occupy a maximum of ten percent of total watershed area outside of the critical area; in order to maintain overall density, non-residential development shall not exceed 70 percent maximum on a project basis; to the maximum extent practicable, non-residential development should minimize built-upon surfaces, direct stormwater away from surface waters and employ best management practices to minimize water quality impacts;
- (VI) If local governments choose to allow development requiring engineered stormwater controls, then they will assume ultimate responsibility for operation and maintenance of the required controls as outlined in Rule .0104(f) of this Subchapter;
- (VII) Vegetative buffer will be maintained adjacent to all perennial

- tributaries; width to be determined by adding 50 feet to four times the percent slope;
- (VIII) No permanent structures will be built in the vegetative buffer;
- (IX) Maintain inventory of all hazardous materials used and stored in the watershed; spill failure containment plan and appropriate safeguards against contamination are required; appropriate recycling of materials is encouraged;
- (X) No new discharging landfills are allowed;
- (ii) Critical Area Nonpoint Source Pollution Control Criteria:
- (I) No new sewer lines are allowed;
- (II) No new industrial development is allowed;
- (III) New development limited to one dwelling unit per two acres or six percent built-upon area;
- (IV) If new development exceeds one dwelling unit per two acres or six percent built-upon area then development must control runoff from the first one inch of rainfall; development not to exceed 30 percent built-upon area;
- (V) Minimum 100 foot vegetative buffer landward from normal pool elevation around reservoir, or greater, depending upon soil type and slope; stream or river used as direct intake will have minimum 100 foot vegetative buffer landward from stream bank for a distance of 1/2 mile if watershed comprises less than 100 square miles otherwise one mile upstream; if 50 plus four times the percent slope is greater than 100 feet then this value must be used as the width of the buffer;
- (VI) No kind application of sludge residuals is allowed;
- (VII) No new landfills are allowed;
- (VIII) No hazardous material use or storage is allowed;
- (C) (A) Odor producing substances contained in sewage, non-process industrial wastes, or other wastes; only such amounts, whether alone or in combination with other substances or wastes, as will not cause taste and odor difficulties in water supplies which cannot be corrected by treatment, impair the palatability of fish, or have a deleterious

effect upon any best usage established for waters of this class;

- (D) (B) Phenolic compounds: not greater than 1.0 ug/l (phenols) to protect water supplies from taste and odor problems from due to chlorinated phenols; specific phenolic compounds may be given a different limit if it is demonstrated not to cause taste and odor problems and not to be detrimental to other best usage;
- (E) (C) Sewage, non-process industrial wastes, or other wastes: none which will have an adverse effect on human health or which are not effectively treated to the satisfaction of the Commission and in accordance with the requirements of the Division of Health Services, Environmental Health, North Carolina Department of Human Resources, Environment, Health, and Natural Resources; any discharger or industrial user subject to pretreatment standards may be required upon request by the Commission to disclose all chemical constituents present or potentially present in their wastes and chemicals which could be spilled or be present in runoff from their facility which may have an adverse impact on downstream water supplies classified WS-III; these facilities may be required to have spill and treatment failure control plans as well as perform special monitoring for toxic substances; NPDES wastewater discharges to WS-III waters are subject to requirements of 15A NCAC 2B .0201(d)(1)(C);
- (F) (D) Total hardness: not greater than 100 mg/l as calcium carbonate;
- (G) (E) Total dissolved solids: not greater than 500 mg/l;
- (H) (F) Toxic and other deleterious substances:
- (i) Water quality standards (maximum permissible levels concentrations) to protect human health through water consumption and fish tissue consumption for non-carcinogens in Class WS-III waters:
- (I) Barium: 1.0 mg/l;
- (II) Chloride: 250 mg/l;
- (III) Manganese: 200 250 ug/l;
- (IV) Nickel: 25 ug/l;
- (V) Nitrate nitrogen: 10.0 mg/l;
- (VI) 2,4-D: 100 ug/l;
- (VII) 2,4,5-TP (Silvex): 10 ug/l;
- (VIII) Sulfates: 250 250 mg/l;
- (ii) Water quality standards (maximum permissible levels concentrations) to

protect human health through water consumption and fish tissue consumption for carcinogens in Class WS-III waters:

- (I) Beryllium: 6.8 ng l;
- (II) Benzene: 1.19 ug l;
- (III) Carbon tetrachloride: 0.254 ug l;
- (IV) Chlorinated benzenes: 488 ug l;
- (V) Dioxin: 0.000013 ng l;
- (VI) Hexachlorobutadiene: 0.445 ug l;
- (VII) Polynuclear aromatic hydrocarbons: 2.8 ng l;
- (VIII) Tetrachloroethane (1,1,2,2): 0.172 ug l;
- (IX) Tetrachloroethylene: 0.8 ug l;
- (X) Trichloroethylene: 3.08 ug l;
- (XI) Vinyl Chloride: 2 ug l;
- (XII) Aldrin: 0.127 ng l;
- (XIII) Chlordane: 0.575 ng l;
- (XIV) DDT: 0.588 ng l;
- (XV) Dieldrin: 0.135 ng l;
- (XVI) Heptachlor: 0.208 ng l;

(f) Class WS-IV Waters.

- (1) Best Usage of Waters. Source of water supply for drinking, culinary, or food-processing purposes for those users where a more protective WS-I, WS-II or WS-III classification is not feasible and any other best usage specified for Class C waters;
- (2) Conditions Related to Best Usage. Waters of this class are protected as water supplies which are generally in moderately to highly developed watersheds or protected areas with a limited number of domestic wastewater discharges and industrial discharges specifically approved by the Commission; no new industrial discharges are allowed in the critical area; local governments will encourage participation in the Agricultural Cost Share Program and will be aware of and, as the existing laws allow, develop, implement, and enforce a comprehensive nonpoint source control program to reduce water pollution from activities within the watershed such as commercial and residential development, forestry, landfills, mining, on-site sanitary sewage systems which utilize ground adsorption, toxic and hazardous materials, transportation, and water based recreation; the waters, following treatment required by the Division of Environmental Health, will meet the maximum contaminant concentrations considered safe for drinking, culinary, or food-processing purposes which are specified in the national drinking water regulations and in the North Carolina Rules Governing

Public Water Supplies, 10 NCAC 10D .1600; sources of water pollution which preclude any of these uses on either a short-term or long-term basis will be considered to be violating a water quality standard;

(3) Quality Standards Applicable to Class WS-IV Waters:

- (A) Industrial Wastes: no new discharges allowed within the critical area;
- (B) Nonpoint Source Pollution: none that would adversely impact the waters for use as water supply or any other designated use;
 - (i) Nonpoint Source Pollution Control Criteria For Entire Watershed Or Protected Area:
 - (I) Residential development must be limited to two dwelling units per acre or 24 percent built-upon area on average in the watershed or protected area outside of critical area;
 - (II) Land within the watershed or protected area will be deemed compliant with the density requirements if the following two conditions are met:
 - (Ia) The density of all existing and platted development meets the density requirement when densities are averaged throughout the entire watershed or protected area;
 - (Ib) All new development meets these density requirement on a project by project basis;
 - (III) Clustering of development allowed outside of critical area on a project by project basis with the following conditions:
 - (Ia) Overall density of the project meets associated density or stormwater control requirements;
 - (Ib) Built-upon areas may only occur in upland area of project that is not immediately adjacent to water supply waters;
 - (Ic) Remainder of tract to remain in vegetated and natural state;
 - (IV) If new development exceeds two dwelling units per acre or 24 percent built-upon area then development must control the runoff from the first one inch of rainfall; development not to exceed 70 percent built-upon area;
 - (V) If local governments choose to allow development requiring engineered stormwater controls, then they will assume ultimate responsi-

- bility for operation and maintenance of the required controls as outlined in Rule .0104(f) of this Subchapter;
- (VI) Vegetative buffer will be maintained adjacent to all perennial tributaries; width to be determined by adding 50 feet to four times the percent slope;
- (VII) No permanent structures will be built in the vegetative buffer;
- (VIII) Maintain inventory of all hazardous materials used and stored in the watershed or protected area; spill/failure containment plan and appropriate safeguards against contamination are required; appropriate recycling of materials is encouraged;
- (ii) Critical Area Nonpoint Source Pollution Control Criteria:
- (I) New development limited to one dwelling unit per acre or 12 percent built-upon area;
- (II) If new development exceeds one dwelling unit per acre or 12 percent built-upon then development must control runoff from the first inch of rainfall; development not to exceed 30 percent built-upon area;
- (III) Minimum 100 foot vegetative buffer landward from normal pool elevation around reservoir, or greater, depending upon soil type and slope; stream or river used as direct intake must have minimum 100 foot vegetative buffer landward from stream bank for a distance of 1/2 mile if watershed comprises less than 100 square miles otherwise one mile upstream; if 50 plus four times the percent slope is greater than 100 feet then this value should be used as the width of the buffer;
- (IV) No land application of sludge residuals is allowed;
- (V) No new landfills are allowed;
- (VI) Hazardous material use or storage allowed if spill failure containment plan and appropriate safeguards against contamination are installed;
- (C) Odor producing substances contained in sewage, industrial wastes, or other wastes: only such amounts, whether alone or in combination with other substances or waste, as will not cause taste and odor difficulties in water supplies which cannot be corrected by treatment, impair the palatability of fish, or have a deleterious effect upon any best usage established for waters of this class;
- (D) Phenolic compounds: not greater than 1.0 ug/l (phenols) to protect water supplies from taste and odor problems due to chlorinated phenols; specific phenolic compounds may be given a different limit if it is demonstrated not to cause taste and odor problems and not to be detrimental to other best usage;
- (E) Sewage, industrial wastes, or other wastes: none which will have an adverse effect on human health or which are not effectively treated to the satisfaction of the Commission and in accordance with the requirements of the Division of Environmental Health, North Carolina Department of Environment, Health, and Natural Resources; any discharges or industrial users subject to pretreatment standards must upon request by the Commission, disclose all chemical constituents present or potentially present in their wastes and chemicals which could be spilled or be present in runoff from their facility which may have an adverse impact on downstream water supplies classified WS-IV; these facilities may be required to have spill and treatment failure control plans as well as perform special monitoring for toxic substances; NPDES wastewater discharges within critical area are subject to treatment standards established by 15A NCAC 2B .0201(d)(1)(C);
- (F) Total hardness: not greater than 100 mg/l as calcium carbonate;
- (G) Total dissolved solids: not greater than 500 mg/l;
- (H) Toxic and other deleterious substances:
- (i) Water quality standards (maximum permissible concentrations) to protect human health through water consumption and fish tissue consumption for non-carcinogens in Class WS-IV waters:
- (I) Barium: 1.0 mg/l;
- (II) Chloride: 250 mg/l;
- (III) Manganese: 50 ug/l;
- (IV) Nickel: 25 ug/l;
- (V) Nitrate nitrogen: 10.0 mg/l;
- (VI) 2,4-D: 100 ug/l;
- (VII) 2,4,5-TP (Silvex): 10 ug/l;
- (VIII) Sulfates: 250 mg/l;
- (ii) Water quality standards (maximum permissible concentrations) to protect human health through water consumption and fish tissue consumption for carcinogens in Class WS-IV waters:

- (I) Beryllium: 6.8 ng l;
(II) Benzene: 1.19 ug l;
(III) Carbon tetrachloride: 0.254 ug l;
(IV) Chlorinated benzenes: 488 ug l;
(V) Dioxin: 0.000013 ng l;
(VI) Hexachlorobutadiene: 0.445 ug l;
(VII) Polynuclear aromatic hydrocarbons: 2.8 ng l;
(VIII) Tetrachloroethane (1,1,2,2): 0.172 ug l;
(IX) Tetrachloroethylene: 0.8 ug l;
(X) Trichloroethylene: 3.08 ug l;
(XI) Vinyl Chloride: 2 ug l;
(XII) Aldrin: 0.127 ng l;
(XIII) Chlordane: 0.575 ng l;
(XIV) DDT: 0.588 ng l;
(XV) Dieldrin: 0.135 ng l;
(XVI) Heptachlor: 0.208 ng l;

(g) (4) Class B Waters.

Statutory Authority G.S. 143-214.1; 143-215.3(a)(1).

SECTION .0300 - ASSIGNMENT OF STREAM CLASSIFICATIONS

.0301 CLASSIFICATIONS: GENERAL

(a) Schedule of Classifications. The classifications assigned to the waters of the State of North Carolina are set forth in the schedules of classifications and water quality standards assigned to the waters of the river basins of North Carolina, 15A NCAC 2B .0302 to .0317 which are on file in the Office of the Attorney General of North Carolina. These classifications are based upon the existing or contemplated best usage of the various streams and segments of streams in the basin, as determined through studies and evaluations and the holding of public hearings for consideration of the classifications proposed.

(b) Stream Names. The names of the streams listed in the schedules of assigned classifications were taken as far as possible from United States Geological Survey topographic maps. Where topographic maps were unavailable, U.S. Corps of Engineers maps, U.S. Department of Agriculture soil maps, and North Carolina highway maps were used for the selection of stream names.

(c) Classifications. The classifications assigned to the waters of North Carolina are denoted by the letters WS-I, WS-II, WS-III, WS-IV B, C, SA, SB, and SC in the column headed "class." A brief explanation of the "best usage" for which the waters in each class must be protected is given as follows:

Fresh Waters

Class WS-I:

waters protected as water supplies which are in natural and uninhabited watersheds; no point source discharges of wastewater are permitted; local nonpoint source control programs to control nonpoint sources of pollution are required; suitable for all Class C uses;

Class WS-II:

waters protected as water supplies which are generally in natural and uninhabited or predominantly undeveloped (not urbanized) watersheds; no point source discharges are permitted, except those discharges existing discharge qualifying at the time of reclassification which qualify for a General Permit according pursuant to the requirements of 15A NCAC 2H .0134 2H .0127 specifically approved by the Commission; at the time of classification; and local land management nonpoint source control programs to control nonpoint source pollution are required; suitable for all Class C uses;

Class WS-III:

waters protected as water supplies which are generally in low to moderately developed (urbanized) watersheds; discharges are restricted to primarily a limited number of treated domestic wastewater (sewage) or industrial non-process waters specifically approved by the Commission; no new discharges are allowed in the critical area; local land management nonpoint source control programs to control nonpoint source pollution are required; suitable for all Class C uses;

<u>Class WS-III:</u>	water supply segment with no categorical restrictions on watershed development or discharges; suitable for all Class C uses.	HQW:	High Quality Waters which are waters that are rated as excellent based on biological and physical/chemical characteristics through division monitoring or special studies, all native and special native trout waters (and their tributaries) designated by the Wildlife Resources Commission, all primary nursery areas (PNA) designated by the Marine Fisheries Commission and other functional nursery areas recognized by the Wildlife Resources Commission or other appropriate agencies, all water supply watersheds which are either classified as WS-I or WS-II or those for which a formal petition for reclassification as WS-I or WS-II has been received from the appropriate local government and accepted by the Division of Environmental Management and all Class SA waters.
<u>Class WS-IV:</u>	waters protected as water supplies which are generally in moderately to highly developed watersheds; discharges are restricted to a limited number of treated domestic (sewage) or industrial wastewater discharges; no new industrial discharges are allowed in the critical area; local nonpoint source control programs to control nonpoint source pollution are required; suitable for all Class C uses.		
Class B:	primary recreation and any other usage specified by the "C" classification;		
Class C:	aquatic life propagation and survival, fishing, wildlife, secondary recreation, and agriculture.		

Tidal Salt Waters

<u>Class SA:</u>	shellfishing for market purposes and any other usage specified by the "SB" and "SC" classification;
<u>Class SB:</u>	primary recreation and any other usage specified by the "SC" classification;
<u>Class SC:</u>	aquatic life propagation and survival, fishing, wildlife, and secondary recreation.

Supplemental Classifications

<u>Trout Waters:</u>	Suitable for natural trout propagation and maintenance of stocked trout;
<u>Swamp Waters:</u>	Waters which have low velocities and other natural characteristics which are different from adjacent streams;
<u>NSW:</u>	Nutrient Sensitive Waters which require limitations on nutrient inputs;

ORW:	Outstanding Resource Waters which are unique and special waters of exceptional state or national recreational or ecological significance which require special protection to maintain existing uses.
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(d) Water Quality Standards. The water quality standards applicable to each classification assigned are those established in 15A NCAC 2B .0200, Classifications and Water Quality Standards Applicable to the Surface Waters of North Carolina, as adopted by the North Carolina Environmental Management Commission.

(e) Index Number.

(1) Reading the Index Number. The index number appearing in the column so designated is an identification number assigned to each stream or segment of a stream, indicating the specific tributary progression between the main stem stream and the tributary stream.

(2) Cross-Referencing the Index Number. The inclusion of the index number in the schedule is to provide an adequate cross

reference between the classification schedules and an alphabetic list of streams.

(f) Classification Date. The classification date indicates the date on which enforcement of the provisions of Section 143-215.1 of the General Statutes of North Carolina became effective with reference to the classification assigned to the various streams in North Carolina.

(g) Reference. Copies of the schedules of classifications adopted and assigned to the waters of the various river basins may be obtained at no charge by writing to:

Director
Division of Environmental Management
~~Department of Natural Resources
and Community Development~~
Department of Environment, Health, and
Natural Resources
Post Office Box 27687
Raleigh, North Carolina 27611

(h) Places where the schedules may be inspected:

Division of State Library
Archives -- State Library Building
109 E. Jones Street
Raleigh, North Carolina.

(i) Unnamed Streams.

- (1) Any stream which is not named in the schedule of stream classifications carries the same classification as that assigned to the stream segment to which it is tributary except:
- (A) unnamed streams specifically described in the schedule of classifications; or
 - (B) unnamed freshwaters tributary to tidal saltwaters will be classified "C"; or
 - (C) after November 1, 1986, any newly created areas of tidal saltwater which are connected to Class SA waters by approved dredging projects will be classified "SC" unless case-by-case reclassification proceedings are conducted.

- (2) The following river basins have different policies for unnamed streams entering other states or for specific areas of the basin:

Hiwassee River Basin (Rule .0302); Little Tennessee River Basin and Savannah River Drainage Area (Rule .0303); French Broad River Basin (Rule .0304); Watauga River Basin (Rule .0305); Broad River Basin (Rule .0306); New River Basin (Rule .0307); Catawba River Basin (Rule .0308); Yadkin-Pee Dee River Basin (Rule .0309); Lumber River Basin (Rule .0310); Roanoke River Basin (Rule .0313); Tar-Pamlico River Basin (Rule

.0316); Pasquotank River Basin (Rule .0317).

Statutory Authority G.S. 143-214.1; 143-215.1; 143-215.3(a)(1).

* * * * *

Notice is hereby given in accordance with G.S. 150B-12 that the Environmental Management Commission intends to amend rule(s) cited as 15A NCAC 2B .0305.

The proposed effective date of this action is February 1, 1991.

The public hearing will be conducted at 7:00 p.m. on August 30, 1990 at Banner Elk Town Hall, Town of Banner Elk, Park Avenue, Banner Elk, North Carolina.

Comment Procedures: All persons interested in this matter are invited to attend. Comments, statements, data, and other information may be submitted in writing prior to, during, or within thirty (30) days after the hearing or may be presented orally at the hearing. Oral statements may be limited at the discretion of the hearing officer. Submittal of written copies of oral statements is encouraged. For more information please contact Suzanne Keen, Div. of Environmental Management, P.O. Box 27687, Raleigh, N.C. 27611 - (919) 733-5083.

SUBCHAPTER 2B - SURFACE WATER STANDARDS: MONITORING

SECTION .0300 - ASSIGNMENT OF STREAM CLASSIFICATIONS

.0305 WATAUGA RIVER BASIN

(c) The Watauga River Basin Schedule of Classifications and Water Quality Standards was amended effective:

- (1) August 12, 1979;
- (2) February 1, 1986;
- (3) October 1, 1987;
- (4) July 1, 1989;
- (5) August 1, 1990;
- (6) December 1, 1990;
- (7) February 1, 1991.

(f) The Schedule of Classifications and Water Quality Standards for the Watauga River Basin was amended effective February 1, 1991 with the reclassification of the Elk River [Index No. S-22-(1)] from its source to Wildcat Creek in-

cluding all tributaries except Sugar Creek from Classes C and C Trout to Classes B and B Trout.

Statutory Authority G.S. 143-214.1; 143-215.1; 143-215.3(a)(1).

* * * * *

Notice is hereby given in accordance with G.S. 150B-12 that the North Carolina Wildlife Resources Commission intends to amend rule(s) cited as 15A NCAC 10B .0119.

The proposed effective date of this action is October 1, 1990.

The public hearing will be conducted at 10:00 a.m. on July 17, 1990 at Room 386, Archdale Building, 512 N. Salisbury Street, Raleigh, NC 27611.

Comment Procedures: Interested persons may present their views either orally or in writing at the hearing. In addition, the record of hearing will be open for receipt of written comments from July 2, 1990 to August 1, 1990. Such written comments must be delivered or mailed to the N.C. Wildlife Resources Commission, 512 N. Salisbury Street, Raleigh, NC 27611.

CHAPTER 10 - WILDLIFE RESOURCES AND WATER SAFETY

SUBCHAPTER 10B - HUNTING AND TRAPPING

SECTION .0100 - GENERAL REGULATIONS

.0119 WILDLIFE COLLECTORS

(a) Collection Licenses. The Executive Director is authorized to license qualified individuals to take or collect any species of wildlife resources other than an except that endangered, or threatened, special concern species. Eastern diamondback rattlesnakes, Carolina pygmy rattlesnakes, and Eastern coral snakes may not be taken or collected. This Rule shall not prohibit an individual from killing an endangered, threatened, or special concern species, or an Eastern diamondback rattlesnake, Carolina pygmy rattlesnake, or Eastern coral snake in defense of his own life or the lives of others without a permit. species except that individuals Individuals who hold less than five reptiles or less than 25 amphibians not on the endangered, threatened or special concern lists and not including Eastern diamondback rattlesnakes,

Carolina pygmy rattlesnakes, and Eastern coral snakes are exempted from this license requirement. Such license shall be issued upon payment of a fee in accordance to the General Statutes, except that licenses may be issued to representatives of educational or scientific institutions or of governmental agencies without charge. Such license may be used in lieu of any other hunting or trapping license required by law and shall authorize possession and transportation of the wildlife incidental to the authorized taking, except that it shall not authorize the taking, possession or transportation of any species of wildlife in violation of federal laws or regulations.

Statutory Authority G.S. 113-134; 113-272.4.

* * * * *

Notice is hereby given in accordance with G.S. 150B-12 that the EHNR - North Carolina Wildlife Resources Commission intends to amend rule(s) cited as 15A NCAC 10C .0305.

The proposed effective date of this action is November 1, 1990.

The public hearing will be conducted at 10:00 a.m. on July 16, 1990 at Room 386, Archdale Building, 512 N. Salisbury Street, Raleigh, North Carolina 27611.

Comment Procedures: Interested persons may present their views either orally or in writing at the hearing. In addition, the record of hearing will be open for receipt of written comments from July 1, 1990 to July 30, 1990. Such written comments must be delivered or mailed to the N. C. Wildlife Resources Commission, 512 N. Salisbury Street, Raleigh, NC 27604-1188.

CHAPTER 10 - WILDLIFE RESOURCES AND WATER SAFETY

SUBCHAPTER 10C - INLAND FISHING REGULATIONS

SECTION .0300 - GAME FISH

.0305 OPEN SEASONS; CREEL AND SIZE LIMITS

(b) Exceptions

- (6) In the inland fishing and joint waters of the coastal rivers and their tributaries extending upstream to the first impoundment or to the headwaters, if unimpounded, the daily creel limit for

striped bass and their hybrids is three fish: ~~and no striped bass between the lengths of 22 inches and 27 inches, both inclusive, may be retained from April 1 through May 31; but no fish may be retained from May 21, 1990 to December 31, 1990.~~ In the Roanoke River and its tributaries upstream to the dam at Roanoke Rapid, no striped bass may be retained from May 10 to March 31.

Statutory Authority G.S. 113-134; 113-292; 113-304; 113-305.

* * * * *

Notice is hereby given in accordance with G.S. 150B-12 that the North Carolina Wildlife Resources Commission intends to amend rule cited as 15A NCAC 10F .0347.

The proposed effective date of this action is October 1, 1990.

The public hearing will be conducted at 10:00 a.m. on July 16, 1990 at Room 386, Archdale Building, 512 North Salisbury Street, Raleigh, North Carolina 27611.

Comment Procedures: Interested persons may present their views either orally or in writing at the hearing. In addition, the record of hearing will be open for receipt of written comments from July 2, 1990 to July 31, 1990. Such written comments must be delivered or mailed to the N.C. Wildlife Commission, 512 North Salisbury Street, Raleigh, NC 27611.

SUBCHAPTER 10F - MOTORBOATS AND WATER SAFETY

SECTION .0300 - LOCAL WATER SAFETY REGULATIONS

.0347 CRAVEN COUNTY

(a) Regulated Areas. This Rule applies to the following waters in Craven County:

- (1) that portion of Northwest Creek between the entrance buoys at Fairfield Harbour Marina and the mouth of Spring Creek, and to all of Spring Creek, including the bulkheaded area of Fairfield Harbour, in Craven County;
- (2) that area of water between the entrance buoys of the Olde Towne Lake, from the Trent River and including all of Olde

Towne Lake and the bulkhead area of Olde Towne Harbour itself;

(3) Matthews Point Marina. That triangular portion within 300 feet on either side and 150 feet straight off of the main pier at Matthews Point Marina located on Clubfoot and Mitchell Creeks, at the end of SR 1711 in the Harlowe area of Craven County;

(4) ~~that area of water within 50 yards of the fuel dock at Eastern Carolina Yacht Club.~~

(b) Speed Limit. No person shall operate any vessel at greater than no-wake speed within the regulated areas described in Paragraph (a) of this Rule.

(c) Placement and Maintenance of Markers. The Board of Commissioners of Craven County is hereby designated a suitable agency for placement and maintenance of the markers implementing this Rule, subject to the approval of the United States Coast Guard and the United States Army Corps of Engineers.

Statutory Authority G.S. 75A-3; 75A-15.

* * * * *

Notice is hereby given in accordance with G.S. 150B-12 that the North Carolina Wildlife Resources Commission intends to amend rules cited as 15A NCAC 10H .0101 - .0109.

The proposed effective date of this action is October 1, 1990.

The public hearing will be conducted at 10:00 a.m. on July 17, 1990 at Room 386, Archdale Building, 512 North Salisbury Street, Raleigh, North Carolina 27611.

Comment Procedures: Interested persons may present their views either orally or in writing at the hearing. In addition, the record of hearing will be open for receipt of written comments from July 2, 1990 to August 1, 1990. Such written comments must be delivered or mailed to the N.C. Wildlife Commission, 512 North Salisbury Street, Raleigh, NC 27611.

SUBCHAPTER 10H - REGULATED ACTIVITIES

SECTION .0100 - CONTROLLED HUNTING PRESERVES FOR DOMESTICALLY RAISED GAME BIRDS

.0101 LICENSE TO OPERATE

A controlled ~~shooting~~ hunting preserve license shall entitle the holder or holders thereof, and their guests, to kill or take, during an extended season, starting October 1 and ending March 31, on such preserves by shooting only, and without regard to sex or bag limits, domestically-raised pheasants, chukar partridges, Hungarian partridges, ~~domestic~~ Mallard ducks (as defined by the United States Fish and Wildlife Service) or other game birds, except wild turkey. Application for controlled ~~shooting~~ hunting preserve licenses shall be made on standard forms obtainable from the commission. Applicants must be prepared to show satisfactory proof of ownership of the land contained in the proposed ~~shooting~~ hunting preserve or that they have this land under proper lease for the duration of the license period.

Statutory Authority G.S. 113-134; 113-273.

.0102 ESTABLISHMENT AND OPERATION

(a) Size of Preserve. Controlled ~~shooting~~ hunting preserves licensed under these regulations shall consist of not less than 100 acres nor more than 1,000 acres and shall be in one block of land.

(b) Boundary of Preserve. The boundary of each controlled ~~shooting~~ hunting preserve shall be posted with printed signs supplied by the preserve owner with wording and sign size according to a sample provided by the Wildlife Resources Commission. ~~to the licensee at cost. These signs shall be valid for only the season issued, and shall not be used for any other purpose.~~ Signs shall be of two types:

- (1) those facing outward from the boundary to prevent trespass; and
- (2) those facing inward from the boundary to confine preserve ~~shooters~~ hunters inside the preserve.

Each set of signs shall be spaced at intervals of not more than 150 feet apart. All boundary signs must be posted not later than September ~~4~~ 10 to provide time for inspection and issue of license to operate by October 1. Applicants not desiring the license by October 1 may delay posting to not later than ~~4~~ 20 days prior to date of license.

(c) Stocking Preserve with Game. An applicant for a controlled ~~shooting~~ hunting preserve license shall present satisfactory evidence of his ability to raise, or purchase, for release on the preserve during the year at least the minimum number herein designated of each species he plans to advertise as being available on his preserve for hunting in accordance with the following formula:

- (1) ring-necked pheasants (and other nonnative game birds except Mallard ducks)--100 birds of each species for each 100 acres, or fraction thereof, included in the preserve;
- (2) bobwhite quail--2,000 quail for the first 200 acres, or fraction thereof, and 500 quail for each additional 200 acres, or fraction thereof, included in the ~~shooting~~ hunting preserve;
- (3) Mallard ducks (one generation removed from the wild)--~~no~~ 100 minimum requirements for each preserve.

Statutory Authority G.S. 113-134; 113-273.

.0103 LABELING

When any person takes ~~bobwhite quail~~ game birds, it shall be unlawful to remove such birds from the ~~shooting~~ hunting preserve or to possess the same thereafter unless the entire bag of such birds is packaged and marked with a label provided by the ~~shooting~~ hunting preserve operator. Such label shall contain:

- (1) the name and address of the ~~shooting~~ hunting preserve,
- (2) the name and address of the possessor of the bird carcasses,
- (3) the number of bird carcasses contained therein,
- (4) a statement that the package may be opened for inspection by an enforcement officer, and
- (5) the signature of the preserve owner or operator.

The said package must be accompanied at all times by the hunter's receipt completed and signed by the preserve operator or his agent as described in Rule .0105 of this Section.

Statutory Authority G.S. 113-134; 113-273; 113-274.

.0104 QUALITY OF BIRDS RELEASED

All birds purchased or raised for release on ~~shooting~~ hunting preserves shall be healthy and free from disease. ~~of any kind as determined by examination and inspection by the Wildlife Resources Commission.~~ Possession of unhealthy or diseased birds will be justifiable grounds for revocation or denial of a controlled ~~shooting~~ hunting preserve license.

Statutory Authority G.S. 113-134; 113-273.

.0105 RECORDS REQUIRED

The licensed operator shall maintain a daily record on forms provided by the preserve operator according to a sample provided at cost by the

Wildlife Resources Commission of each hunter using the controlled ~~shooting~~ hunting preserve. This record shall bear the name, address, and license number of the preserve; the name, address, state hunting license number of each hunter using the preserve, the date of the hunt, and the number of each species of game bird or animal killed by the hunter on the preserve. The record shall bear the signature of the operator of the preserve and shall be prepared in ~~triplicate~~ duplicate; the original to be given to the hunter to serve as a receipt for birds killed on the preserve, the ~~first copy to be mailed to the Wildlife Resources Commission by the 10th day of each month for the preceding month's sale of hunting privilege,~~ and the ~~remaining~~ duplicate copy to be retained by the licensee for 12 months and shall be open for inspection by authorized Commission personnel upon demand. If no hunters are accommodated during any month of the season, a negative report will be mailed to the Wildlife Resources Commission within ten days following the last day of the month. It is unlawful for a person to possess native or nonnative game birds killed on controlled ~~shooting~~ hunting preserves, unless the said birds are accompanied by an approved receipt as described in this Rule. The licensee shall maintain a daily record of each game bird species liberated on the preserve. This record shall be open for inspection by authorized commission personnel upon demand. ~~and a copy of this record shall be submitted monthly to the Wildlife Resources Commission, Archdale Building, 512 North Salisbury Street, Raleigh, North Carolina 27611. If no birds are released during any month of the season, a negative report shall be submitted. Form for recording release data will be provided at cost by the commission.~~ Representatives of the commission shall be permitted to enter the premises at reasonable times for inspection, enforcement, or scientific purposes.

Statutory Authority G.S. 113-134; 113-273; 113-274.

.0106 HUNTING LICENSE REQUIRED

Every person hunting on a controlled ~~shooting~~ hunting preserve shall have in his possession a proper resident or nonresident hunting license or a special controlled ~~shooting~~ hunting preserve hunting license for the current year as required by law.

Statutory Authority G.S. 113-134; 113-270.2; 113-273.

.0107 REVOCATION OF LICENSE TO

OPERATE

In accordance with provisions of G.S. 113-276.2, the Wildlife Resources Commission may revoke or suspend the license of any ~~shooting~~ hunting preserve operator upon violation of these rules and regulations. When there is evidence of such a violation, the executive director or his designee shall give the said operator 20 days notice in writing to show cause to the executive director or his designee why said license should not be suspended or revoked.

Statutory Authority G.S. 113-134; 113-273; 113-276.2.

.0108 BIRD FEEDERS

(a) Purpose of Rule. The purpose of this Rule is to prescribe criteria governing the numbers, types and locations of bird feeders on controlled ~~shooting~~ hunting preserves in the vicinity of which properly licensed hunters may take game birds as provided by law.

(b) Number of Feeders. The maximum number of bird feeders which may be placed on any controlled ~~shooting~~ hunting preserve shall not exceed one for each 25 acres of land contained within the boundaries of the preserve.

(c) Types of Feeders. For the purposes of this Rule, bird feeders may be either of commercial design or of domestic manufacture, provided that in either case they are not designed to disperse grain or other food on the ground around the feeders and are sheltered so as to protect such grain or food from dampness and precipitation.

(d) Location of Feeders. For the purposes of this Rule, no bird feeder shall be placed within 100 yards of any boundary of a controlled ~~shooting~~ hunting preserve; otherwise the original locations of such feeders shall be in the discretion of the ~~shooting~~ hunting preserve operator.

(e) Map Showing Locations. Before any person shall be allowed to take game birds in the vicinity of a bird feeder, a reasonably accurate map delineating the boundaries of the controlled ~~shooting~~ hunting preserve and accurately depicting the locations of all bird feeders contained within such boundaries shall be provided annually to the Wildlife Resources Commission. After such map has been so provided, no additional bird feeder shall be placed on any controlled ~~shooting~~ hunting preserve and no such bird feeder shall be moved from the location shown on such map during the license season unless an amended map is filed with Division of ~~game~~ Wildlife Management and approved prior to relocation.

Statutory Authority G.S. 113-134; 113-273.

.0109 QUAIL CALL-PEN TRAPS

(a) Permit Required. A licensed controlled shooting hunting preserve operator who releases pen-raised quail for hunting or dog training purposes may apply to the Wildlife Resources Commission for a permit to operate one or more quail call-pen traps in accordance with the requirements of this Rule for the purpose of recovering any such quail that are not killed. Such application shall be made on a form supplied by the commission which shall contain such information as may be required by the executive director and which shall be accompanied by a reasonably accurate map delineating the boundaries of the controlled shooting hunting preserve and indicating the proposed location of each call-pen trap to be located thereon.

(b) Term of Permit. The permit required by Subsection (a) of this Rule shall become valid upon registration of a call-pen trap as required by this Rule and shall expire coincident with the expiration of the license of the controlled shooting hunting preserve. No call-pen trap shall be utilized before the open shooting hunting preserve season or until it has been registered.

(c) Location of Traps. No quail call-pen trap shall be located within 100 yards of any external boundary of the shooting hunting preserve, and no such trap shall be relocated after registration during the term of the current shooting hunting preserve license.

(d) Number of Traps. The number of quail call-pen traps shall be limited to one for any controlled shooting hunting preserve containing less than 300 acres, two for any preserve containing 300 or more acres but less than 600 acres, and three for any preserve containing 600 acres or more.

(e) Registration. After construction and prior to use, each call-pen trap shall be provided with a registration card which must be securely attached and visibly displayed on the trap.

Statutory Authority G.S. 113-134; 113-291.1.

TITLE 20 - DEPARTMENT OF STATE TREASURER

Notice is hereby given in accordance with G.S. 150B-12 that the Local Government Commission intends to amend rule cited as 20 NCAC 3 .0112.

The proposed effective date of this action is October 1, 1990.

The public hearing will be conducted at 10:00 a.m. on July 17, 1990 at Conference Room, Room 100, Albemarle Building, 325 North Salisbury Street, Raleigh, North Carolina 27603-1388.

Comment Procedures: A written copy of the comments will be required of all persons wishing to speak at the Public Hearing. The hearing period will remain open for written comments until July 19, 1990. Written comments should be sent to the APA Coordinator at the address above.

CHAPTER 3 - LOCAL GOVERNMENT COMMISSION

SECTION .0100 - GENERAL PROVISIONS

.0112 FEES

(a) The following fees shall be charged for services rendered or to be rendered for each category of bonds and notes set forth:

- (1) Bonds sold pursuant to G.S. 115E - \$2,500.00
- (2) ~~(3)~~ Bonds sold pursuant to G.S. Chapter 131A - \$2,500.00
- (3) ~~(4)~~ Bonds sold pursuant to G.S. Chapter 159B - \$5,000.00
- (4) ~~(2)~~ Bonds sold pursuant to G.S. Chapters 159C and 459D - \$1,000.00
- (5) Bonds sold by the North Carolina Industrial Facilities and Pollution Control Finance Authority pursuant to G.S. Chapter 159D (per participant) - \$400.00
- (6) All other bonds sold pursuant to G.S. Chapter 159D - \$1,000.00
- (7) Bonds sold pursuant to G.S. 159I - \$2,500.00
- (8) ~~(5)~~ All notes issued in anticipation of issuance of a bond for which a fee is set forth herein - \$500.00
- (9) ~~(4)~~ All other revenue bonds, Other issues of debt receiving commission approval, other than general obligation bonds - \$2,500.00

(b) In addition to the fees set forth in this Rule, all travel and subsistence incurred, and all material amounts of other expenses, e.g. telephone and postage, incurred shall be for the account of the issuer. ~~of the securities~~ When paid by the state, they shall be billed to the issuer. ~~of the securities~~

(c) In addition to expenses pursuant to Paragraph (b) of this Rule, the following fees shall be charged for the services set forth herein:

- (1) Approvals to counties pursuant to G.S. 105-487(c) - \$250.00

- (2) Approvals to municipalities pursuant to G.S. 105-487(c) - \$250.00
- (3) Approvals of installment purchase contracts under G.S. 160A-20 where no public offering is proposed - \$250.00
- (4) Approvals of installment purchase contracts under G.S. 160A-20 where a public offering, including but not limited to certificates of participation, is proposed - \$2,500.00

Statutory Authority G.S. 159-3(f); 159-6.

TITLE 21 - OCCUPATIONAL LICENSING BOARD

Notice is hereby given in accordance with G.S. 150B-12 that the North Carolina Board of Physical Therapy Examiners intends to amend rules cited as 21 NCAC 48A .0001; 48B .0002; 48C .0101 - .0102, .0501; 48D .0003, .0005 - .0006; 48E .0103; 48F .0002.

The proposed effective date of this action is December 1, 1990.

The public hearing will be conducted at 11:00 a.m. on August 2, 1990 at 900 Ridgefield Drive, Suite 250, Raleigh, North Carolina 27609.

Comment Procedures: Interested persons may present their views either orally or in writing at the hearing. In addition, the record of hearing will be open for receipt of written comments from July 2, 1990, to 5:00 p.m. on August 1, 1990. Such written comments must be delivered or mailed to Constance Peake, N.C. Board of Physical Therapy Examiners, 2426 Tryon Road, Durham, N.C. 27705.

CHAPTER 48 - BOARD OF PHYSICAL THERAPY EXAMINERS

SUBCHAPTER 48A - ORGANIZATION

.0001 NAME AND LOCATION

The North Carolina Board of Physical Therapy Examiners has its records at 2426 Tryon Road, Durham, North Carolina 27705, telephone (919) ~~489-7844~~, 490-6393. The executive secretary will be available there by appointment.

Statutory Authority G.S. 90-270.26.

SUBCHAPTER 48B - TYPES OF LICENSES

.0002 LICENSES BY ENDORSEMENT

(b) *Examination Required. Only those persons initially licensed in another state by virtue of examination will be considered for endorsement. Only the following examinations will be considered:*

(I) *For Physical Therapists:*

(A) *Therapists licensed on the basis of a PT exam must present scores on it that meet the North Carolina passing level. If adequate scores and information are not available from the other state, the Board may ask the applicant to have his scores issued through the appropriate testing service. If score the score on one or two parts any part of the examination is unsatisfactory, the part or parts exam must be repeated. If the total score or three parts are failed, the entire examination must be repeated. The cost of repeating the examination will be paid by the applicant.*

(2) *For Physical Therapist Assistants. Only those physical therapist assistants licensed in another state by a PTA exam will be considered for endorsement. The examination score must meet the North Carolina passing level. If not, the applicant will be required to repeat the examination take the PTA exam and pay the cost of the examination.*

Statutory Authority G.S. 90-270.26; 90-270.31(b); 90-270.33.

SUBCHAPTER 48C - SCOPE OF PHYSICAL THERAPY PRACTICE

SECTION .0100 - PHYSICAL THERAPISTS

.0101 PERMITTED PRACTICE

(c) *A physical therapist must supervise physical therapist assistants, physical therapy aides, PT graduates, and PTA graduates, PT students and PTA students only to the extent required under the Physical Therapy Practice Act and these Rules.*

Statutory Authority G.S. 90-270.24; 90-270.26.

.0102 RESPONSIBILITIES

(d) *The physical therapist may delegate appropriate supervisory responsibilities to physical therapist assistants, but the supervising physical therapist is responsible for determining that the PT or PTA student is working under appropriate supervision at all times. A physical therapist licensee who supervises a PT graduate or PTA graduate must be present in the facility when patient care activities are undertaken.*

PROPOSED RULES

Statutory Authority G.S. 90-270.24; 90-270.26; 90-270.31; 90-270.34.

SECTION .0500 - PHYSICAL THERAPY STUDENTS

.0501 EXEMPTION FOR STUDENTS

(a) Students enrolled in educational programs that are either accredited or are candidates in good standing for accreditation by an agency recognized by either the U.S. Office of Education or the Council on Postsecondary Accreditation, are included in the exemption from licensure contained in G.S. 90-270.34(a)(1) while completing a clinical requirement for graduation.

(b) While completing the clinical requirement, the student must be supervised by a licensee who is present in the facility when patient care activities are undertaken.

Statutory Authority G.S. 90-270.26(1); 90-270.29; 90-270.34(a)(1).

SUBCHAPTER 48D - EXAMINATIONS

.0003 NOTICE OF EXAMINATION

(b) Examinees. Written notice of time, date and place of examination and examination ID number will be sent to each person scheduled to take the examination.

Statutory Authority G.S. 90-270.26; 93B-8(b).

.0005 EXAMINATION SCORES

(c) Transfer of Scores. Scores will be released as follows:

- (1) To an individual who took the examination in North Carolina at his request and with no charge;
- (2) To licensing Boards in other states upon the request of the individual and the payment of the fee; licensure information may be included with the score release;
- (3) To other persons or institutions upon the request of the individual. and the payment of the fee.

Statutory Authority G.S. 90-270.26; 90-270.33.

.0006 NOTIFICATION OF EXAMINATION RESULTS

(b) North Carolina Educational Programs. After each examination the North Carolina educational programs that had graduates taking the examination in North Carolina will be sent the scores, for all their graduates with no identification number or identifying name, but identification numbers and names will not be included. The North Carolina passing level and the cumulative data for the examination will be included.

Statutory Authority G.S. 90-270.26.

SUBCHAPTER 48E - APPLICATION FOR LICENSURE

SECTION .0100 - REQUIREMENTS

.0103 REFERENCES

Two character references are required from individuals other than relatives who have known the applicant for at least one year.

Statutory Authority G.S. 90-270.26; 90-270.29; 90-270.31(b).

SUBCHAPTER 48F - CERTIFICATES: FEES: INVESTIGATIONS: RECORD OF LICENSEES

.0002 FEES

(a) The following fees are charged by the Board:

- (+) computer print-out or labels of any portion of list of physical therapists and physical therapist assistants, sixty dollars (\$60.00);
- (++) (10) computer print-out or labels of any portion of list of physical therapists, forty dollars (\$40.00); sixty dollars (\$60.00);

Statutory Authority G.S. 25-3-512; 90-270.33.

The List of Rules Codified is a listing of rules that were filed to be effective in the month indicated.

*R*ules filed for publication in the NCAC may not be identical to the proposed text published previously in the Register. Please contact this office if you have any questions.

*A*dopted rules filed by the Departments of Correction, Revenue and Transportation are published in this section. These departments are not subject to the provisions of G.S. 150B, Article 2 requiring publication in the N.C. Register of proposed rules.

*U*pon request from the adopting agency, the text of rules will be published in this section.

*P*unctuation, typographical and technical changes to rules are incorporated into the **List of Rules Codified** and are noted as * **Correction**. These changes do not change the effective date of the rule.

TITLE 17 - DEPARTMENT OF REVENUE

CHAPTER 4 - LICENSE AND EXCISE TAX DIVISION

SUBCHAPTER 4B - LICENSE TAXES

The Department of Revenue transferred and recodified the following rules to comply with legislative changes effective July 1, 1990:

17 NCAC	4B .0504	to	17 NCAC	4B .0313
	.1102	to		.4501
	.1202	to		.4502
	.1203	to		.4503
	.1708	to		.4504
	.1902	to		.4505
	.2602	to		.4506
	.2603	to		.4507
	.2604	to		.4508
	.2605	to		.4509
	.2108	to		.4510
	.2110	to		.4511
	.2111	to		.4512
	.2112	to		.4513
	.2202	to		.4514
	.2203	to		.4515
	.2204	to		.4516
	.2205	to		.4517
	.2207	to		.4518
	.2801	to		.4519
	.2802	to		.4520
	.2804	to		.4521

SECTION .0100 - GENERAL ADMINISTRATION

.0103 SEASONAL BUSINESS

*History Note: Statutory Authority G.S. 105-33; 105-262;
Eff. February 1, 1976;
Amended Eff. April 1, 1986; October 30, 1981;*

FINAL RULES

Repealed Eff. July 1, 1990.

.0110 LOCATION WITHIN MILE OF TWO CITIES

*History Note: Statutory Authority G.S. 105-33; 105-262;
Eff. June 11, 1977;
Repealed Eff. July 1, 1990.*

SECTION .0300 - AMUSEMENTS NOT OTHERWISE TAXED

.0308 DRAG STRIPS

A drag strip operation for which an admission is charged to the spectators would be subject to liability under G.S. 105-37.1. The license fee under this Section is treated as an advance payment upon the three percent gross receipts tax due on such admission charges. Form B-205, Report of Gross Receipts Tax, is due monthly, not later than the tenth of the month. When a drag strip is operated where spectator fees are not charged, but a fee is charged to the individuals for the use of the track for their own entertainment, liability would be due under G.S. 105-102.5.

*History Note: Statutory Authority G.S. 105-37.1; 105-262;
Eff. February 1, 1976;
Amended Eff. July 1, 1990.*

.0309 GO-CART RACES

(a) If a go-cart race is conducted for which admission is charged to spectators, such event would be subject to liability for license and three percent gross receipts tax under G.S. 105-37.1.
(b) If a person operates a go-cart track where races are not conducted, but rents go-carts to others for use around the track, such place of amusement would be subject to license under G.S. 105-102.5

*History Note: Statutory Authority G.S. 105-37.1; 105-262;
Eff. February 1, 1976;
Amended Eff. July 1, 1990.*

SECTION .0500 - AMUSEMENTS: CARNIVAL COMPANIES: ETC.

.0501 LOCATION AND DATE

*History Note: Statutory Authority G.S. 105-39; 105-262;
Eff. February 1, 1976;
Repealed Eff. July 1, 1990.*

.0503 REPORT OF GROSS RECEIPTS TAX

*History Note: Statutory Authority G.S. 105-39; 105-104; 105-262;
Eff. February 1, 1976;
Repealed Eff. July 1, 1990.*

.0505 NO ADDITIONAL PRIVILEGE LICENSES

*History Note: Statutory Authority G.S. 105-39; 105-262;
Eff. June 11, 1977;
Amended Eff. July 1, 1979;
Repealed Eff. July 1, 1990.*

SECTION .1100 - BICYCLE DEALERS

.1101 APPLICABILITY OF LICENSE TO ANOTHER

*History Note: Statutory Authority G.S. 105-49; 105-89.1; 105-262;
Eff. February 1, 1976;
Repealed Eff. July 1, 1990.*

FINAL RULES

SECTION .1300 - PEDDLERS

.1304 NOT PRORATED NOR TRANSFERABLE

History Note: Statutory Authority G.S. 105-53; 105-262;
Eff. February 1, 1976;
Repealed Eff. July 1, 1990.

.1305 OTHER APPLICABLE LICENSES DUE

In addition to requirement under G.S. 105-53, a peddler, an itinerant merchant, or a specialty market vendor is subject to other applicable privilege licenses for each location, depending upon the kind of merchandise sold or offered for sale.

History Note: Statutory Authority G.S. 105-53; 105-105; 105-262;
Eff. February 1, 1976;
Amended Eff. July 1, 1990; July 1, 1988.

.1307 FISH EXEMPTION

History Note: Statutory Authority G.S. 105-53; 105-262; 113-129;
Eff. June 11, 1977;
Repealed Eff. July 1, 1990.

.1308 LICENSE PROCUREMENT AND DISPLAY

History Note: Statutory Authority G.S. 105-53; 105-262;
Eff. July 1, 1988;
Repealed Eff. July 1, 1990.

.1309 INFORMATION TO REVENUE DEPARTMENT

History Note: Statutory Authority G.S. 105-53; 105-262;
Eff. July 1, 1988;
Repealed Eff. July 1, 1990.

SECTION .1500 - MERCANTILE AGENCIES

.1502 REPORT OF FINANCIAL STANDING

History Note: Statutory Authority G.S. 105-57; 105-262;
Eff. February 1, 1976;
Repealed Eff. July 1, 1990.

SECTION .1600 - DAY-CARE FACILITIES

.1601 NUMBER LICENSED BY BOARD

(a) The number of children for which a day-care facility is licensed by the Department of Human Resources as of July 1 of each year is used in determining liability for the day-care facilities privilege license.

(b) In the case of a new day-care facility, the number of children licensed by the Department of Human Resources on the first day of operation of the new facility is used in determining the tax liability.

History Note: Statutory Authority G.S. 105-60; 105-262;
Eff. February 1, 1976;
Amended Eff. July 1, 1990.

SECTION .1700 - HOTELS; MOTELS; TOURIST COURTS; TOURIST HOMES; CAMPGROUNDS; TRAILER PARKS

FINAL RULES

.1706 CHURCH ASSEMBLY

A church assembly operated and limited to the educational program of the church operating a cafeteria and offering sleeping facilities for those attending the training program of the church school is not subject to privilege licenses under G.S. 105-61 and G.S. 105-62. However, the operation of a drink dispenser, food or merchandising dispenser, or the sale of tobacco or bottled drinks at the church assembly, is subject to general business privilege license under G.S. 105-102.5.

*History Note: Statutory Authority G.S. 105-61; 105-102.5; 105-262;
Eff. February 1, 1976;
Amended Eff. July 1, 1990; October 30, 1981.*

SECTION .1800 - RESTAURANTS

.1810 CATERING SERVICE

The minimum fifty dollar (\$50.00) cafe license is due for a catering service. This license would be due for the location from which the food is prepared for delivery.

*History Note: Statutory Authority G.S. 105-62; 105-262;
Eff. June 11, 1977;
Amended Eff. July 1, 1990.*

SECTION .1900 - BILLIARD AND POOL TABLES

.1901 TABLE MEASUREMENT

*History Note: Statutory Authority G.S. 105-64; 105-262;
Eff. February 1, 1976;
Repealed Eff. July 1, 1990.*

SECTION .2100 - MERCHANDISING DISPENSERS AND WEIGHING MACHINES

.2105 NO LOCATION LICENSE WHEN GROSS RECEIPTS DUE

*History Note: Statutory Authority G.S. 105-65.1; 105-262;
Eff. February 1, 1976;
Amended Eff. July 1, 1979;
Repealed Eff. July 1, 1990.*

.2114 COFFEE AND HOT CHOCOLATE

In determining liability for open cup drink dispenser operator's license, open cup coffee and hot chocolate dispensers are counted in the same manner as open cup soft drink dispensers, as they are drink dispensers. Persons other than an operator having on location such dispensers are subject to general business license under G.S. 105-102.5.

*History Note: Statutory Authority G.S. 105-65.1; 105-102.5; 105-262;
Eff. February 1, 1976;
Amended Eff. July 1, 1990; July 1, 1979.*

.2115 COIN-OPERATED GAS PUMPS

*History Note: Statutory Authority G.S. 105-65.1; 105-65.2; 105-262;
Eff. February 1, 1976;
Amended Eff. July 1, 1979;
Repealed Eff. July 1, 1990.*

.2116 PHOTOSTAT AND PHOTOGRAPH MACHINES

Coin-operated photostat and photograph machines are not subject to license tax under G.S. 105-65.1 or G.S. 105-102.5.

History Note: Statutory Authority G.S. 105-65.1; 105-102.5; 105-262;

*Eff. February 1, 1976;
Amended Eff. July 1, 1990; July 1, 1979.*

.2117 DUAL PURPOSE VENDING MACHINE

(a) A dual purpose vending machine dispensing more than one type of merchandise; such as, cigarettes and food items, subjects an operator of five or more of such machines to operator's license for cigarette dispensers and also for food dispensers. Proper accounting procedures should be followed by the operator to substantiate the various type sales made from such machines which are subject to the gross receipts tax under G.S. 105-65.1 vs. any sales not subject to gross receipts tax.

(b) Persons, other than an operator under G.S. 105-65.1, placing on location a dual purpose vending machine must obtain a general business license prescribed under G.S. 105-102.5.

*History Note: Statutory Authority G.S. 105-65.1; 105-102.5; 105-262;
Eff. June 11, 1977;
Amended Eff. July 1, 1990; July 1, 1979.*

**SECTION .2200 - BAGATELLE TABLES, MERRY-GO-ROUNDS: ETC.,
AND ELECTRONIC VIDEO GAMES**

.2201 ONE LICENSE FOR OTHER GAMES

*History Note: Statutory Authority G.S. 105-66; 105-262;
Eff. February 1, 1976;
Repealed Eff. July 1, 1990.*

.2206 ARCHIERY RANGES

*History Note: Statutory Authority G.S. 105-66; 105-262;
Eff. February 1, 1976;
Repealed Eff. July 1, 1990.*

SECTION .2700 - DEALERS IN PISTOLS: ETC.

.2701 PISTOL LICENSE COVERS METALLIC CARTRIDGE

.2702 SEPARATE LICENSE FOR BLANK CARTRIDGE PISTOLS

.2703 APPLICABILITY OF LICENSE TO ANOTHER

*History Note: Statutory Authority G.S. 105-80; 105-262;
Eff. February 1, 1976;
Repealed Eff. July 1, 1990.*

SECTION .3000 - LAUNDRIES

.3005 HOME-SIZE MACHINES

*History Note: Statutory Authority G.S. 105-85; 105-262;
Eff. February 1, 1976;
Repealed Eff. July 1, 1990.*

SECTION .3400 - AUTOMOBILE: WHOLESALE SUPPLY DEALERS: AND SERVICE STATIONS

.3408 SELF-SERVICE CAR WASH

The service garage license is not due on a self-service car wash operation where no service to the car is rendered by the car wash operator. However, the general business license under G.S. 105-102.5 would be due on any coin-operated soap with water dispensers.

*History Note: Statutory Authority G.S. 105-89; 105-102.5; 105-262;
Eff. February 1, 1976;
Amended Eff. July 1, 1990; July 1, 1979.*

.3412 MOBILE SERVICE AND REPAIR

A mobile car wash or garage going to the residence or place of business of the customer to service or repair motor vehicles is due the service station or garage license under G.S. 105-89(a) for his base location.

*History Note: Statutory Authority G.S. 105-89; 105-262;
Eff. June 11, 1977;
Amended Eff. July 1, 1990.*

.3413 APPLYING FULL YEAR AND HALF-YEAR LICENSE

(a) One-half year license purchased under subsection (a) of G.S. 105-89 can be applied on one-half year license levied under subsection (b) or subsection (c) of G.S. 105-89.

(b) Full year license purchased under subsection (a) of G.S. 105-89 can be applied on full year license levied under subsection (b) or subsection (c).

(c) A business cannot apply full year license purchased under subsection (a) on one-half year license levied under subsection (b) or subsection (c). If the nature of the business changes, between the period January 1, and June 30, from one taxed under subsection (a) to one taxed under subsection (b) or subsection (c), one-half year license is due. No credit is given for the full year license purchased under subsection (a) since it was used during the first half of the license tax year.

Example: Taxpayer changes the nature of the business from garage to auto dealer after January 1. Since taxpayer used the fifty dollar (\$50.00) garage license during the first half of the tax year, no credit is given against the one hundred dollar (\$100.00) auto dealer license.

Tax due = One half year auto dealer license fifty dollars (\$50.00).

(d) The provisions specified in Paragraphs (a), (b) and (c) of this Rule are also applicable in applying credit for a license purchased under subsection (b) on the license levied under subsection (c) of G.S. 105.89.

*History Note: Statutory Authority G.S. 105-89; 105-262;
Eff. April 1, 1986;
Amended Eff. July 1, 1990.*

SECTION .3900 - MANUFACTURERS OF ICE CREAM

.3903 MOBILE UNITS

*History Note: Statutory Authority G.S. 105-97; 105-262;
Eff. February 1, 1976;
Repealed Eff. July 1, 1990.*

SECTION .4400 - ENGAGING IN BUSINESS WITHOUT A LICENSE

.4402 RATE OF PENALTY: INTEREST

Penalty accrues at the rate of five percent per month for each delinquent month or fraction thereof, not to exceed 50 percent of the tax. Interest shall apply to taxes, including assessments of taxes or additional taxes, on gross receipts levied in G.S. 105-37.1(a), G.S. 105-38(f) and G.S. 105-65.1(b)(2) and on installment paper dealers levied in G.S. 105-83(b) from the time such taxes were due to have been paid until paid, at rate established pursuant to G.S. 105-241.1(i). Interest applicable to refunds for overpayments of gross receipts and installment paper taxes shall be at the rate established by G.S. 105-266.

*History Note: Statutory Authority G.S. 105-109; 105-109.1; 105-262;
Eff. February 1, 1976;
Amended Eff. July 1, 1990; March 14, 1980.*

SECTION .4500 - GENERAL BUSINESS

.4501 SMALL TWO-WHEEL VEHICLE

A small two-wheel vehicle with trainer wheels, and without free wheeling or without brakes, is classified as a bicycle and the sale of same is subject to privilege license under G.S. 105-102.5.

History Note: Statutory Authority G.S. 105-102.5; 105-262;

Eff. February 1, 1976;

Transferred and Recodified from 17 NCAC 4B .1102 Eff. July 1, 1990;

Amended Eff. July 1, 1990.

.4502 BOTTLER SELLING DRINK DISPENSERS

A bottler of soft drinks is not subject to a license under G.S. 105-102.5 for the sale of coin-operated drink dispensers.

History Note: Statutory Authority G.S. 105-102.5; 105-262;

Eff. February 1, 1976;

Transferred and Recodified from 17 NCAC 4B .1202 Eff. July 1, 1990;

Amended Eff. July 1, 1990.

.4503 NOT SPECIFICALLY MENTIONED

Small appliances, windmills, steel towers, electric pumps, automatic water systems, etc., not being specifically mentioned or included by implication, do not come within the purview of G.S. 105-102.5.

History Note: Statutory Authority G.S. 105-102.5; 105-262;

Eff. February 1, 1976;

Transferred and Recodified from 17 NCAC 4B .1203 Eff. July 1, 1990;

Amended Eff. July 1, 1990.

.4504 GOVERNMENT CAMPGROUNDS

G.S. 105-102.5(4) is not applicable to the activities set out under this Section when operated by the federal government, state government or local government units.

History Note: Statutory Authority G.S. 105-102.5; 105-262;

Eff. February 1, 1976;

Transferred and Recodified from 17 NCAC 4B .1708 Eff. July 1, 1990;

Amended Eff. July 1, 1990.

.4505 COLLEGE UNION

A college union operated by a college or university for the benefit of its students is not subject to a license for operating a cafe or pool tables. However, a general business license would be due for the sale of soft drinks and tobacco products.

History Note: Statutory Authority G.S. 105-102.5; 105-262;

Eff. February 1, 1976;

Amended Eff. July 1, 1979;

Transferred and Recodified from 17 NCAC 4B .1902 Eff. July 1, 1990;

Amended Eff. July 1, 1990.

.4507 VETERANS CLUBS

Veterans clubs when selling to members or others are not exempt from payment of general business license or other applicable privilege licenses.

History Note: Statutory Authority G.S. 105-102.5; 105-262;

Eff. February 1, 1976;

Amended Eff. July 1, 1979;

Transferred and Recodified from 17 NCAC 4B .2603 Eff. July 1, 1990;

Amended Eff. July 1, 1990.

.4514 GOVERNMENTAL ACTIVITY

FINAL RULES

(a) A city operated swimming pool or golf course is a governmental activity; thus is exempt from a general business licenses under G.S. 105-102.5(8).

(b) A municipality is liable for state privilege license on the operation of mechanical rides and similar amusements under G.S. 105-102.5, as the operation of same goes beyond that which is governmental in nature and is a proprietary operation.

History Note: Statutory Authority G.S. 105-102.5; 105-262;

Eff. February 1, 1976;

Transferred and Recodified from 17 NCAC 4B .2202 Eff. July 1, 1990;

Amended Eff. July 1, 1990.

.4515 NONPROFIT PRIVATE CLUBS

Nonprofit private clubs operating swimming pools or golf courses solely for the use of members only, are not subject to the general business license under G.S. 105-102.5(8).

History Note: Statutory Authority G.S. 105-102.5; 105-262;

Eff. February 1, 1976;

Transferred and Recodified from 17 NCAC 4B .2203 Eff. July 1, 1990;

Amended Eff. July 1, 1990.

.4516 SHUFFLEBOARD, PINBALL AND BOWLING MACHINES

The operator of coin-operated shuffleboards, pinball machines, bowling machines, etc. is subject to license under G.S. 105-102.5 unless the possession or operation of these amusements is otherwise prohibited by law.

History Note: Statutory Authority G.S. 105-102.5; 105-262;

Eff. February 1, 1976;

Amended Eff. June 11, 1977;

Transferred and Recodified from 17 NCAC 4B .2204 Eff. July 1, 1990;

Amended Eff. July 1, 1990.

.4517 SKI SLOPES: ICE SKATING AND ROLLER RINKS

Operators of ski slopes and ice skating or roller rinks are subject to license under G.S. 105-102.5. If an admission is charged for such entertainment, and not just a fee for skating or skiing, a license and gross receipts tax are due under G.S. 105-37.1.

History Note: Statutory Authority G.S. 105-102.5; 105-262;

Eff. February 1, 1976;

Transferred and Recodified from 17 NCAC 4B .2205 Eff. July 1, 1990;

Amended Eff. July 1, 1990.

.4518 SEVERAL OPERATORS AT ONE LOCATION

Where several operators are placing amusement machines at one location and paying the owner a percentage of receipts or rent for space, each operator is due tax liability under G.S. 105-102.5. If the owner rents the machines, then he is liable for the tax.

History Note: Statutory Authority G.S. 105-102.5; 105-262;

Eff. February 1, 1976;

Transferred and Recodified from 17 NCAC 4B .2207 Eff. July 1, 1990;

Amended Eff. July 1, 1990.

.4519 FREE RECORD WITH PURCHASE OF MERCHANDISE

When a manufacturer conducts sales whereby a gift of a record is offered with the purchase of its manufactured product and a retail dealer or consumer may buy the product with or without the record at the same cost, neither party is subject to the general business license.

History Note: Statutory Authority G.S. 105-102.5; 105-262;

Eff. February 1, 1976;

Amended Eff. October 30, 1981;

*Transferred and Recodified from 17 NCAC 4B .2801 Eff. July 1, 1990;
Amended Eff. July 1, 1990.*

.4520 FLASHLIGHT BATTERIES

The sale of flashlight type batteries is not subject to tax under G.S. 105-102.5; however, batteries designed for radios, including transistor batteries, come within the taxable provisions of G.S. 105-102.5.

History Note: Statutory Authority G.S. 105-102.5; 105-262;

Eff. February 1, 1976;

Transferred and Recodified from 17 NCAC 4B .2802 Eff. July 1, 1990;

Amended Eff. July 1, 1990.

.4521 SHORTWAVE RADIOS

The sale of shortwave radios (including citizens band radios) does not constitute liability under G.S. 105-102.5. In the case of the sale of parts, however, liability would exist when such parts are interchangeable with regular radio parts.

History Note: Statutory Authority G.S. 105-102.5; 105-262;

Eff. June 11, 1977;

Transferred and Recodified from 17 NCAC 4B .2804 Eff. July 1, 1990;

Amended Eff. July 1, 1990.

SUBCHAPTER 4E - ALCOHOLIC BEVERAGES TAX

SECTION .0100 - LICENSES

.0105 SALESMAN FOR PROPRIETORSHIP OPERATION

History Note: Statutory Authority G.S. 105-113.74; 105-262;

Eff. February 1, 1976;

Amended Eff. July 1, 1984;

Repealed Eff. July 1, 1990.

SECTION .0200 - MONTHLY REPORTS; PAYMENT OF TAX

.0209 BEER OR WINE TO EMPLOYEES AND GUESTS

Beer or wine can be furnished or sold to employees and guests of a permittee only as authorized under the Alcoholic Beverage Control Laws of North Carolina, provided that appropriate North Carolina excise tax is paid. However, resident manufacturers are relieved from paying excise tax on malt beverages and wine that are furnished free of charge to customers, visitors and employees on the manufacturer's licensed premises for consumption on said premises. Resident manufacturers having liability for payment of any excise tax shall file Form B-C-710, B-C-783, or B-C-784, whichever is appropriate, accompanied by payment of the tax due.

History Note: Statutory Authority G.S. 105-113.81; 105-262;

Eff. February 1, 1976;

Amended Eff. July 1, 1990; April 1, 1986; July 1, 1984.

CHAPTER 7 - SALES AND USE TAX

SUBCHAPTER 7B - STATE SALES AND USE TAX

SECTION .3400 - MEMORIAL STONE AND MONUMENT DEALERS AND MANUFACTURERS

.3401 MEMORIAL STONE SALES

(a) Except as provided in Paragraph (b) of this Rule, sales of memorial stones to users or consumers are subject to the three percent state and two percent local sales or use tax. Where the seller of a memorial stone or monument agrees to install such stone or monument upon a foundation, a segregation must be made of materials used and installation charges involved, on an invoice given to the customer at the time of the sale. The seller may deduct the installation labor costs or services from the gross

proceeds of the sale only when a segregation of the billing is made to the customer; otherwise, the total charge is taxable.

(b) Effective July 1, 1986, the first fifteen hundred dollars (\$1,500.00) of all funeral expenses, including gross receipts from tangible personal property furnished and services rendered by funeral directors, morticians and undertakers, or by monument and memorial stone dealers, shall be exempt from sales or use taxes. The term "funeral expenses", as used in this Rule, shall include charges by monument or memorial stone dealers for the sale and installation of memorial stones and monuments purchased by the estate of a deceased person and allowed as a funeral expense. It shall also include charges by monument and memorial stone dealers for the sale and installation of memorial stones and monuments purchased by a family member or other person responsible for the funeral expenses within one year after the death of the deceased person. The fifteen hundred dollars (\$1,500.00) exemption is applicable to the total charge for the sale and installation of a memorial stone or monument notwithstanding that the installation charge may be separately stated on the invoice at the time of the sale and in the vendor's records. Vendors making sales of memorial stones and monuments or services subject to the fifteen hundred dollars (\$1,500.00) exemption must keep sales invoices, books and other records showing the name of the purchaser, the total sales price of the tangible personal property, the date of the sale, the date of the death of the deceased person and the total sales price of all tangible personal property and services furnished.

*History Note: Statutory Authority G.S. 105-164.3 105-164.4; 105-262;
Eff. February 1, 1976;
Amended Eff. July 1, 1990.*

SECTION .4300 - REFUNDS TO INTERSTATE CARRIERS

.4301 IN GENERAL

(a) Any person engaged in transporting persons or property in interstate commerce for compensation who is subject to regulation by, and to the jurisdiction of, the Interstate Commerce Commission or the United States Department of Transportation and who is required by either such federal agency to keep records according to its standard classification of accounting or, in the case of a small certified air carrier, is required by the United States Department of Transportation to make reports of financial and operating statistics, may secure from the Secretary of Revenue a refund of the North Carolina state and county sales or use tax paid by such person on purchases or acquisitions of lubricants, repair parts and accessories in this state for motor vehicles, railroad cars, locomotives and airplanes operated by such person. Class I, II and III common and contract carriers are under the jurisdiction of the Interstate Commerce Commission; however, Class III common and contract carriers are not required to keep records according to the Interstate Commerce Commission's standard classification of accounting and are not entitled to a refund under the provisions of this Rule. Persons not meeting all of the requirements in this Rule are not entitled to a refund under the provisions of this Rule. The highway use tax levied under Article 5A of Chapter 105 of the General Statutes is not refundable under the provisions of this Rule and the fee levied on new motor vehicle tires by the Scrap Tire Disposal Act is not refundable under the provisions of this Rule.

- (1) The following are items of tangible personal property which may be included in purchases on lines 4 (a) and (b) of the application for refund, Form E-581, filed by interstate carriers:
- (A) antennas;
 - (B) antifreeze;
 - (C) bedding for motor vehicle sleeping compartments;
 - (D) charts for tachographs;
 - (E) decals for motor vehicles;
 - (F) emergency flares and reflectors;
 - (G) fire extinguishers;
 - (H) freon or nitrogen used in refrigerating and cooling motor vehicles;
 - (I) furniture pads;
 - (J) lifeboats and oxygen masks;
 - (K) load jacks and chains;
 - (L) mobile CB radios;
 - (M) motor vehicle seat cushions;
 - (N) paints for decals;
 - (O) passenger car tires and tubes;

- (P) polyethylene liners (used to waterproof trailers);
 - (Q) pouches for registration cards and permits;
 - (R) radios;
 - (S) ramp equipment (aircraft steps used to embark or disembark aircraft);
 - (T) ropes and chains to tie down cargo (adapted for use on motor vehicles; otherwise not allowed);
 - (U) signs (metal signs attached to trucks);
 - (V) tarpaulin;
 - (W) tire chains;
 - (X) welding rods for repair of motor vehicles;
 - (Y) windshield solvents;
 - (Z) zipped covers for grills.
- (2) The following are purchases of items of tangible personal property which should not be included in the claim:
- (A) drivers' gloves;
 - (B) drivers' uniforms;
 - (C) food trays (airplanes);
 - (D) fork lift tires and parts;
 - (F) gauges for testing equipment;
 - (F) hand trucks;
 - (G) license and inspection fees;
 - (H) pallets;
 - (I) pillows (airplanes);
 - (J) repair labor;
 - (K) road service charges;
 - (L) security seals;
 - (M) sixty percent on recapped tires where forty percent of the combined price is taxed (Regulation 17 NCAC 7B .1901);
 - (N) tire volume discounts;
 - (O) tools, shop supplies;
 - (P) trip logs;
 - (Q) wax and washing supplies.
- (3) The lists in this Rule are not intended to be exclusive, but are for illustrative purposes only. If there is any question as to whether or not any item which does not appear therein should be included in purchases on lines 4 (a) and (b) of the application for refund, a ruling on such items may be obtained from the Sales and Use Tax Division.
- (b) The secretary shall compute the North Carolina sales or use tax which would be due with respect to all lubricants, repair parts and accessories acquired during the refund period as though all such purchases were made in this state but only on such proportion of the total purchase prices thereof as the total number of miles of operation of such applicant's motor vehicles, railroad cars, locomotives and airplanes within this state bears to the total number of miles of operation of such applicant's motor vehicles, railroad cars, locomotives and airplanes within and without this state, and such amount of sales and use tax as the applicant has paid in this state during said refund period in excess of the amount so computed shall be refunded to the applicant.
- (c) The secretary shall compute the county sales or use tax which would be due with respect to all lubricants, repair parts and accessories acquired in taxing counties during the refund period and acquired outside such counties during the refund period for use or consumption in the taxing counties but only on that portion of the total purchase prices thereof as the total number of miles of operation of such applicant's motor vehicles, railroad cars, locomotives and airplanes within this state bears to the total number of miles of operation of such applicant's motor vehicles, railroad cars, locomotives and airplanes within and without this state, and such amount of county sales or use tax as the applicant has paid in this state during said refund period in excess of the amount so computed shall be refunded to the applicant. The application for refund form must show a separate computation of each county's tax to be refunded.
- (d) Application for refund forms will be furnished by the Secretary of Revenue and should be signed by a duly authorized person and notarized. Claims shall be filed quarterly within 60 days from the close of each quarter ending in March, June, September and December of each year covering the purchases or acquisitions during the preceding quarter of lubricants, repair parts and accessories for motor vehicles, railroad cars, locomotives and airplanes. Any claim not filed during the period specified above

will not be allowed unless an extension of time has been granted, in which case the claim must be filed during the extended period.

(c) The application for refund shall show, in addition to all other required information, the total number of miles of operation of motor vehicles, railroad cars, locomotives and airplanes within and without this state, the total number of miles of operation of motor vehicles, railroad cars, locomotives and airplanes in this state, the total purchase price of lubricants, repair parts and accessories for motor vehicles, railroad cars, locomotives and airplanes and the total amount of North Carolina state and county sales and use tax paid on such purchases. Any sales or use tax paid to state or local taxing authorities must be excluded from total purchases as shown on line four of the application for refund. The amount of purchases of accessories attached to motor vehicles at the time of purchase on which the highway use tax was paid shall not be included in total purchases on line four (a) of the refund form. The application for refund form contains the procedure prescribed for computing the amount of the refund and the information necessary to complete such application. Records, upon which the application for refund is based, must be maintained in such manner as to enable a representative of the Department of Revenue to accurately and conveniently verify the correctness of the applicant's statements. The application for refund should be completed in triplicate and two copies returned to the North Carolina Department of Revenue, Sales and Use Tax Division, Raleigh, North Carolina, within the time prescribed herein. After a representative of the department has verified the correctness of the application for refund, a voucher for the amount due, if any, will be issued.

(f) Nothing in this Rule shall be so construed as to relieve any taxpayer of liability for remitting sales or use tax on taxable purchases of lubricants, repair parts and accessories for motor vehicles, railroad cars, locomotives and airplanes.

History Note: Statutory Authority G.S. 105-164.14; 105-262;

Eff. February 1, 1976;

Amended Eff. July 1, 1990; February 1, 1987; March 1, 1984; January 3, 1984.

SECTION .4600 - MOTOR VEHICLES AND BOATS

.4601 SALES AND PURCHASES OF AUTOMOBILES AND OTHER MOTOR VEHICLES

(a) The Sales and Use Tax Article was amended, effective October 1, 1989, to provide an exemption from sales and use taxes for sales of motor vehicles, the separate sales of a motor vehicle body and a motor vehicle chassis when the body is to be mounted on the chassis, and the sale of a motor vehicle body to be mounted by the manufacturer thereof on a motor vehicle chassis that temporarily enters the state for that purpose.

Prior to October 1, 1989, sales of motor vehicles, as defined in Paragraph (b) of this Rule, to users or consumers were subject to the two percent rate of tax with a maximum tax of three hundred dollars (\$300.00) applicable to the sale of any one motor vehicle. The tax was to be computed on the gross sales price of the motor vehicle less any allowance for a motor vehicle taken in trade as a credit or part payment on the sales price thereof. The gross sales price of the motor vehicle included any parts or accessories installed thereon at the time of the sale, labor for installing such parts or accessories, freight and any other charges for preparing the vehicle for sale. Prior to and after October 1, 1989, parts or accessories sold separately from the sale of a motor vehicle are subject to the three percent state and two percent county rates of tax; however, charges for labor to install such parts or accessories are not subject to tax when separately stated on the customer's invoice and in the vendor's records.

Prior to October 1, 1989, separate sales of a new motor vehicle chassis and a new motor vehicle body to be installed thereon, whether sold by the same or different retailers, were subject to the maximum tax on sales of motor vehicles. Such sales are treated as a single sale. Retailers making sales of this nature must retain in their permanent records evidence of the amount of tax paid on the purchase of a new body or chassis and compute the amount of additional tax to be charged by determining the difference between the tax already paid and the amount of tax due on the combined selling price of such body and chassis subject to the maximum tax. When a new motor vehicle body was sold to be installed on a used motor vehicle chassis, the tax was to be computed on the sales price of the new motor vehicle body, subject to the maximum tax without regard to any tax previously paid on the used chassis.

Prior to October 1, 1989, the lease receipts derived from the lease or rental of a motor vehicle to a user or consumer in this state were subject to the two percent sales or use tax. The maximum tax of three hundred dollars (\$300.00) was applicable to the receipts derived from the lease or rental of a motor vehicle for a stipulated period of time. Persons who leased or rented motor vehicles were to collect and

remit the tax on the separate retail sale of a motor vehicle in addition to the tax imposed on the lease or rental of the motor vehicle.

(b) Motor Vehicle defined: For the purposes of the Sales and Use Tax Article, the term motor vehicle means any vehicle which is self-propelled and designed primarily for use upon the highways, any vehicle which is propelled by electric power obtained from trolley wires but not operated upon rails, and any vehicle designed to run upon the highways which is propelled by a self-propelled vehicle, but shall not include any implement of husbandry, farm tractor, road construction or maintenance machinery or equipment, special mobile equipment as defined in G.S. 20-4.01, any vehicle designed primarily for use in work off the highway and, effective August 1, 1989, a manufactured home.

(c) Special Mobile Equipment Defined: Every truck, truck-tractor, industrial truck, trailer, or semi-trailer on which have been permanently attached cranes, mills, well-boring apparatus, ditch digging apparatus, air compressors, electric welders or any similar type apparatus or which have been converted into living or office quarters, or other self-propelled vehicles which were originally constructed in a similar manner which are operated on the highway only for the purpose of getting to and from a non-highway job and not for the transportation of persons or property or for hire. This shall also include trucks on which special equipment has been mounted and used by the American Legion or Shrine Temples for parade purposes, trucks or vehicles privately owned on which fire-fighting equipment has been mounted and which are used only for fire-fighting purposes, and vehicles on which are permanently mounted feed mixers, grinders, and mills although there is also transported on the vehicle molasses or other similar type feed additives for use in connection with the feed-mixing, grinding or milling process.

(d) Prior to October 1, 1989, the sales or use tax was to be computed on the gross sales price of a motor vehicle less any allowance for a motor vehicle taken in trade as a part of the consideration for the purchased vehicle. Prior to October 1, 1989, sales of all motor vehicles accepted in trade or repossessed by vendors were subject to sales or use tax regardless of the fact that such motor vehicles may have been acquired by trade or repossessed by vendors. Prior to October 1, 1989, when property, other than motor vehicles, was taken in trade as a part of the consideration for a purchased vehicle, the sales or use tax was to be computed and paid on the full gross sales price of the motor vehicle without any deduction whatever on account of any trade-in credit or allowance. The sale of used property, other than a motor vehicle, by the dealer who accepted same in trade would then be exempt from tax. Effective October 1, 1989, motor vehicles are exempt from sales and use taxes and the sale of used property, other than a motor vehicle, taken in trade as a part of the consideration for the purchased vehicle is subject to sales tax. Repair parts withdrawn from inventory by a dealer and installed upon such property for sale are not subject to the tax. Certificates of resale may be executed by registered dealers when purchasing repair parts for resale or for use in reconditioning such property for sale.

(e) Prior to October 1, 1989, sales of motor vehicles to a registered merchant for resale were not subject to tax when supported by properly executed Resident and Nonresident Retail or Wholesale Merchant's Certificate of Resale, Form E-590, or other evidence in writing adequate to support the conclusion that he was registered with the Department of Revenue or in a taxing jurisdiction outside this state for sales and use tax purposes and that the property was being purchased for the purpose of resale. Certificates of resale may also be executed by registered motor vehicle leasing firms when purchasing motor vehicles which they will lease or rent to their customers since such firms must remit tax on their lease or rental receipts. Prior to October 1, 1989, sales of motor vehicles to out-of-state merchants who accept delivery of the vehicles in this state for resale in their respective states are not subject to tax provided such merchants are registered for sales and use tax purposes in a taxing jurisdiction outside this state and furnish the North Carolina merchant a properly completed certificate of resale. Reference is made to 17 NCAC 7B .3201 for further information regarding sales to nonresident merchants.

(f) Prior to October 1, 1989, sales of motor vehicles to nonresident purchasers which were delivered to them in North Carolina for immediate transportation to and use in another state in which such vehicles are required to be registered were not subject to sales tax. For the purpose of the exemption, the term "immediate transportation to . . . another state" means to either drive or transport the vehicle outside North Carolina en route to its state of registration within seventy-two hours after the purchase thereof; however, purchases of motor vehicles by military personnel for use in North Carolina are taxable notwithstanding that such persons might have registered the motor vehicles in their home states. The seller must have obtained from the purchaser and furnished to the Secretary of Revenue an Affidavit for Exemption of Motor Vehicle Sold for Immediate Transportation and Use Outside of North Carolina, Form E-599B, stating the name and address of the purchaser, the state in which the vehicle will be registered and operated, the make, model, and serial number of the vehicle, and such other in-

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formation as the Secretary may require. The exemption was fully allowed when the affidavit was filed with the seller's sales and use tax report for the month during which the sale was made and such report was timely filed. When an affidavit concerning a sale of a motor vehicle to a nonresident purchaser was not filed with the retailer's sales and use tax report for the month in which the sale of the vehicle was made and the failure to file the affidavit is discovered on or after August 12, 1989, it shall be accepted if it is filed within 30 days after such discovery, but no refund shall be made of sales and use taxes already paid. An affidavit filed within this 30-day period is subject to a penalty of 25 percent of the tax applicable to the sales price of the motor vehicle. If the affidavit is submitted to the Secretary of Revenue after the end of this 30-day period, no exemption shall be allowed. The provisions of this Paragraph are not applicable to sales of motor vehicles which are subject to the highway use tax after September 30, 1989.

History Note: Statutory Authority G.S. 105-164.4; 105-164.5; 105-164.6; 105-164.13; 105-262;

Eff. February 1, 1976;

Amended Eff. July 1, 1990; February 1, 1988; March 1, 1987; December 1, 1984.

.4602 AIRCRAFT: BOATS: RAILWAY CARS: LOCOMOTIVES: MANUFACTURED HOMES

(a) Effective August 1, 1989, the maximum sales tax on retail sales of aircraft, boats, railway cars or locomotives increased from three hundred dollars (\$300.00) to fifteen hundred dollars (\$1,500.00). The rate of tax applicable to such sales of aircraft, boats, railway cars or locomotives continues to be two percent and is payable to the Secretary of Revenue on vendors' sales and use tax reports.

Effective October 1, 1989, the term "motor vehicle", as set forth under G.S. 105-164.3(8b), excludes a manufactured home. G.S. 105-164.3(8a) defines a "manufactured home" as a structure that is designed to be used as a dwelling and:

- (1) Is built on a permanent chassis;
- (2) Is transportable in one or more sections;
- (3) When transported, is at least eight feet wide or 40 feet long; and
- (4) When erected on a site, has at least 320 square feet.

Retail sales of manufactured homes will continue to be subject to the two percent rate of sales tax with a maximum tax of three hundred dollars (\$300.00) per article including all accessories attached to the manufactured home when it is delivered to the purchaser. Each section of a manufactured home that is transported to the site where it is to be erected is a separate article. Dealers must continue to remit sales tax to the Secretary of Revenue on their retail sales of manufactured homes.

(b) A retail sale of a boat with a boat trailer is considered to be the sale of two separate articles. The retail sale of the boat trailer, a motor vehicle within the meaning of the statute, is subject to the three percent highway use tax with a maximum tax of one thousand dollars (\$1,000.00) applicable to the trailer. The retail sale of the boat is subject to the two percent rate of tax with a maximum tax of fifteen hundred dollars (\$1,500.00) applicable to the sale of any boat except for those sales exempt from tax under the provisions of G.S. 105-164.13(9). The tax shall be computed on the gross sales price of the boat, including charges for the boat motor, fenders, boat and motor controls, compasses, windshields, horns, lights, or any other parts or accessories, all of which must be attached thereto at the time of delivery to the purchaser, labor for installing such parts and accessories, freight or any other charge for preparing the boat for sale. Life jackets, life rings, cushions, flares, fire extinguishers and rope are considered to be safety equipment rather than accessories to the boat and sales of such items at retail are subject to the three percent state and two percent county rates of tax notwithstanding they are sold with the boat. Parts and accessories, including boat motors, fenders, boat and motor controls, lights, windshields, horns and other above-named items sold separately from the sale of a boat are also subject to the three percent state and two percent county rates of tax.

History Note: Statutory Authority G.S. 105-164.4; 105-164.6; 105-262;

Eff. February 1, 1976;

Amended Eff. July 1, 1990; January 3, 1984; May 11, 1979.

.4604 SPECIAL EQUIPMENT-ACCESSORIES: MOTOR VEHICLES

(a) Effective October 1, 1989, retail sales of motor vehicles, including all accessories attached to the vehicles when delivered to the purchaser, are exempt from sales tax. Prior to October 1, 1989, retail sales of motor vehicles with special accessories such as pulling devices, hole digging devices, aerial working devices or other special accessories which are attached to and a part of such motor vehicles when they are delivered to purchasers are subject to the two percent rate of tax with a maximum tax

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of three hundred dollars (\$300.00) applicable to each such vehicle. The term "motor vehicle", as used in this Rule, means any vehicle which is self-propelled and designed primarily for use upon the highways and any vehicle designed to run upon the highways which is propelled by a self-propelled vehicle, but shall not include any implement of husbandry, farm tractor, road construction or maintenance machinery or equipment, special mobile equipment as defined in G.S. 20-4.01 or any vehicle designed primarily for use in work off the highway.

(b) Persons selling such special equipment or accessories at retail which they mount upon a motor vehicle chassis or body belonging to others must collect and remit the three percent state and two percent county sales or use tax thereon. Any charges for labor or services rendered in installing or applying such items are not subject to tax provided such charges are segregated from the charge for the tangible personal property sold on the invoice given to the customer at the time of sale and in the vendor's records; otherwise the total amount is subject to tax.

*History Note: Statutory Authority G.S. 105-164.4; 105-164.6; 105-262;
Eff. February 1, 1976;
Amended Eff. July 1, 1990; December 1, 1988.*

.4606 MOTOR VEHICLES USED BY DEALERS

(a) Prior to October 1, 1989, when a motor vehicle dealer appropriated a motor vehicle from inventory for his own use or to be assigned to a salesman for his personal use and for business related purposes and the dealer placed a regular license plate thereon, the dealer was liable for payment of the applicable use tax on the vehicle when it was so appropriated. When the dealer subsequently sold the vehicle, he could claim credit for the use tax paid to this Department against the sales tax due on the sales price thereof and or against the sales tax due on the sales price of any used motor vehicle taken in trade on such vehicle or a series of trades relating to such vehicle until the total credit was exhausted. If the dealer made a nontaxable sale of such vehicle, for example, a sale at wholesale or a sale to a nonresident purchaser for use outside this state pursuant to an affidavit, Form E-599B, and the dealer did not accept a used motor vehicle in trade, there would have been no credit due for tax paid to this Department at the time the vehicle was appropriated for use.

(b) Prior to October 1, 1989, when a dealer appropriated a vehicle from inventory for use in demonstrating it to prospective customers and he placed a dealer plate thereon, there was no sales or use tax due on the vehicle so long as it was so used and bore a dealer plate; however, the sales tax was due when the vehicle was sold at retail.

*History Note: Statutory Authority G.S. 105-164.4; 105-164.6; 105-262;
Eff. February 1, 1976;
Amended Eff. July 1, 1990; March 1, 1984.*

.4609 FIRE TRUCKS AND EQUIPMENT

(a) Prior to October 1, 1989, sales of fire trucks to municipalities, counties and rural fire protection districts organized under Chapter 69 of the North Carolina General Statutes were taxable at the rate of two percent and the maximum tax of three hundred dollars (\$300.00) was applicable with respect to any one fire truck including all accessories built into or affixed thereto by the manufacturer such as nozzles, hoses, hose reels, hose straps, hose clamps, hose connections, adapters, play pipes, ladders, tanks, booster pumps, pike poles, etc.

(b) Retail sales of axes, brooms, buckets, shovels, ropes, general purpose tools, gas masks, first aid kits, blankets, portable pumps, portable fire extinguishers and like articles are considered to be other fire fighting equipment rather than accessories to the fire truck, and sales of such items at retail are subject to the three percent state and two percent local rates of tax without any maximum tax applicable thereto notwithstanding such sales are made to the above type customers or that the items are sold with fire trucks. Privately owned fire trucks or vehicles on which fire fighting equipment has been mounted that are used only for fire fighting purposes are classified as special mobile equipment, and sales thereof are subject to the three percent state and two percent local rates of tax. Sales of repair parts to municipalities, counties, rural fire protection districts, and industrial users for use in repairing fire trucks are subject to the three percent state and two percent local rates of tax.

*History Note: Statutory Authority G.S. 105-164.4; 105-164.6; 105-262;
Eff. February 1, 1976;
Amended Eff. July 1, 1990; January 3, 1984.*

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.4610 MOTOR VEHICLES: SALES BY FEDERAL GOVERNMENT

*History Note: Statutory Authority G.S. 105-164.4; 105-164.6; 105-262;
Eff. February 1, 1976;
Repealed Eff. July 1, 1990.*

.4612 MOTOR VEHICLE SELLING EXPENSES

Prior to October 1, 1989, documentary fees related to the cost of transferring the title of a motor vehicle, charges for obtaining license plates therefor and fees for notary services were not subject to the sales tax when such charges were separately stated from the sales price of the motor vehicle on the invoice given to the customer at the time of the sale and were separately shown in the vendor's records. Such charges were considered to be in addition to the sales price of the motor vehicle.

*History Note: Statutory Authority G.S. 105-164.3; 105-262;
Eff. February 1, 1976;
Amended Eff. July 1, 1990.*

.4613 MOTOR VEHICLE LESSORS

Lessors within and without North Carolina are liable for collecting and remitting the applicable rate of tax on receipts derived from the lease or rental of tangible personal property to lessees for use in this state. Prior to October 1, 1989, when North Carolina lessors leased motor vehicles to out-of-state lessees to be located, domiciled or assigned in this state for use in interstate operations, including North Carolina, the lessors were required to collect and remit tax on the receipts derived therefrom notwithstanding that the lease may have been negotiated outside North Carolina. When North Carolina lessors leased motor vehicles to out-of-state lessees for use in intrastate operations in North Carolina, the lessors were required to collect and remit tax on the lease receipts notwithstanding that the leases were negotiated outside this state or that the vehicles were delivered to the lessees at a point outside this state or were registered outside this state. When North Carolina lessors leased motor vehicles to out-of-state lessees for use exclusively in a state other than North Carolina, the initial lease payments were subject to this state's tax if the vehicles were delivered to the lessees at a point within this state. When the vehicles were delivered to the lessees at points outside this state, the lease receipts were not subject to this state's tax. When a motor vehicle was leased outside North Carolina for use in North Carolina, the lease receipts were subject to this state's tax. Effective October 1, 1989, the sale, lease or rental of a motor vehicle is exempt from sales or use taxes and subject to the highway use tax as provided by 17 NCAC 7B .4619.

*History Note: Statutory Authority G.S. 105-164.4; 105-164.6; 105-262;
Eff. February 1, 1976;
Amended Eff. July 1, 1990.*

.4614 PICKUP CAMPERS: TRAILERS

Retail sales of camper trailers which are designed to run on the streets and highways and which are pulled by a self-propelled vehicle are properly classified as motor vehicles and exempt from sales tax effective October 1, 1989. Retail sales of such camper trailers are subject to the highway use tax on and after October 1, 1989. Retail sales of slide-in pickup camper units are subject to the three percent state and two percent local sales or use tax.

*History Note: Statutory Authority G.S. 105-164.4; 105-164.6; 105-262;
Eff. February 1, 1976;
Amended Eff. July 1, 1990.*

.4615 MANUFACTURED HOMES

(a) Prior to October 1, 1989, the retail sale of a manufactured home designed to run upon the streets and highways, when pulled by a self-propelled vehicle was classified as a motor vehicle subject to the two percent rate of sales tax with a maximum tax of three hundred dollars (\$300.00) per vehicle including all accessories attached thereto at the time of delivery to the purchaser. The tax was to be computed on the gross sales price less any allowance for a manufactured home or motor vehicle taken in trade as a part of the consideration for the purchased manufactured home. Effective October 1, 1989,

the term "motor vehicle", as set out in G.S. 105-164.3, excludes a manufactured home. A "manufactured home" is defined as a structure that is designed to be used as a dwelling and:

- (1) Is built on a permanent chassis;
- (2) Is transportable in one or more sections;
- (3) When transported, is at least eight feet wide or 40 feet long; and
- (4) When erected on a site, has at least 320 square feet.

Retail sales of manufactured homes will continue to be subject to the two percent rate of sales tax with a maximum tax of three hundred dollars (\$300.00) per article including all accessories attached to the manufactured home when it is delivered to the purchaser. Each section of a manufactured home that is transported to the site where it is to be erected is a separate article subject to the two percent rate of sales or use tax with a maximum tax of three hundred dollars (\$300.00) applicable thereto. Effective October 1, 1989, the tax is to be computed on the gross sales price of the manufactured home without any deduction whatever on account of any trade-in credit or allowance. The gross sales price of the manufactured home includes any parts or accessories installed thereon at the time of the sale and delivery to the customer, labor for installing such parts or accessories, freight, or any other charges for preparing the manufactured home for sale. Parts or accessories sold separately from the sale of a manufactured home are subject to the three percent state and two percent local rates of tax; however, charges for labor to install such parts or accessories are not subject to tax when separately stated on the customer's invoice and in the vendor's records.

(b) Any furniture, appliances or accessories placed in a manufactured home by the manufacturer or the dealer and which are a part of the sale and delivery of the manufactured home to a customer are included in the gross sales price of the manufactured home, subject to the two percent rate of tax with a maximum tax of three hundred dollars (\$300.00) applicable to the sale. Anchor bolts, tie-downs, skirting, steps, and central or window air-conditioning units that are to be attached to a manufactured home and that are a part of the sale of a manufactured home at the time of delivery to the customer or at the time of installation by a dealer for his customer are included in the sales price subject to the two percent rate of tax with a maximum tax of three hundred dollars (\$300.00) applicable to the sale of each manufactured home.

(c) Any charge made by a vendor to a customer for running gear upon which a manufactured home is delivered is a part of the gross sales price of such manufactured home subject to the two percent rate of tax, with a maximum tax of three hundred dollars (\$300.00), notwithstanding that such charge may be separately stated from the charge for the manufactured home on the invoice given to the customer at the time of the sale. The return of running gear to a dealer for credit or refund of such charge does not alter the rate of tax applicable to the sale, and the customer is not entitled to a credit or refund of the tax paid on the charge for the running gear returned or sold to the dealer.

(d) Any sale of furniture, appliances and other accessories to a customer by a dealer after the sale of the manufactured home has been consummated is subject to the three percent state and any applicable local sales or use tax. Cement blocks which are used to prepare or build the foundation for or to level a manufactured home, the sewer pipe used to connect a manufactured home to the septic or sewer system, and wedges used for leveling a manufactured home do not come within the definition of accessories attached at the time of delivery and, therefore, purchases of these items by dealers or other users or consumers in this state to be used in the installation of a manufactured home are subject to the three percent state and any applicable local sales or use tax.

History Note: Statutory Authority G.S. 105-164.4; 105-164.6; 105-262;

Eff. February 1, 1976;

Amended Eff. July 1, 1990; January 3, 1984; July 5, 1980; March 24, 1978.

.4616 DOUBLE-WIDE MOBILE HOMES

History Note: Statutory Authority G.S. 105-164.4; 105-164.6; 105-262;

Eff. February 1, 1976;

Amended Eff. January 3, 1984; July 5, 1980; March 24, 1978;

Repealed Eff. July 1, 1990.

.4617 MOBILE CLASSROOM, OFFICE AND STORAGE TRAILERS

(a) Prior to October 1, 1989, the retail sale of a mobile classroom trailer, a mobile office trailer or a mobile storage trailer designed to run upon the streets and highways, which is pulled by a self-propelled vehicle, was taxable at the rate of two percent of the sales price with a maximum tax of three hundred

dollars (\$300.00) applicable to the sale of each trailer. Effective October 1, 1989, retail sales of such trailers are exempt from sales tax and subject to the three percent rate of highway use tax with a minimum tax of forty dollars (\$40.00) and a maximum tax of one thousand dollars (\$1,000.00) on any one such trailer. The basis for the tax on sales of such trailers is the sales price of the trailer including all accessories attached thereto at the time of delivery to the purchaser less the amount of any allowance given by the retailer for trailers and other motor vehicles taken in trade. The gross sales price of a mobile trailer includes any parts or accessories installed thereon at the time of the sale, labor for installing such parts and accessories, freight, or any other charges for preparing the mobile trailer for sale. The provisions of Regulation 17 NCAC 7B .4615 are applicable to the sale of a mobile trailer with furniture, appliances and accessories attached thereto or installed thereon by the manufacturer or the dealer at the time of sale or delivery to the customer.

*History Note: Statutory Authority G.S. 105-164.4; 105-164.6; 105-262;
Eff. February 1, 1976;
Amended Eff. July 1, 1990; January 3, 1984; July 5, 1980; March 24, 1978.*

SECTION .5400 - FORMS USED FOR SALES AND USE TAX PURPOSES

.5401 MONTHLY SALES AND USE TAX REPORT FORM: E-500

The Monthly Sales and Use Tax Report Form, E-500, is for use by registered taxpayers to report their sales and use tax liability on a monthly basis. A supply of forms is sent to monthly taxpayers when registration is effected and annually thereafter.

*History Note: Statutory Authority G.S. 105-164.15; 105-164.16; 105-262;
Eff. February 1, 1976;
Amended Eff. July 1, 1990.*

.5439 MOTOR VEHICLE EXEMPTION FORM: E-599B

The Affidavit for Exemption of Motor Vehicle Sold for Immediate Transportation and Use Outside of North Carolina, Form E-599B, must be completed by nonresident purchasers of motor vehicles for immediate transportation to and use in another state in which such vehicles are required to be registered. Such purchases of vehicles are exempt from sales tax when the purchaser either drives or transports the vehicle outside North Carolina en route to its state of registration within seventy-two hours after the purchase thereof. Prior to October 1, 1989, the seller must obtain from the purchaser and furnish to the Secretary of Revenue an Affidavit for Exemption of Motor Vehicle Sold for Immediate Transportation and Use Outside of North Carolina, Form E-599B, stating the name and address of the purchaser, the state in which the vehicle will be registered and operated, the make, model, and serial number of the vehicle, and such other information as the secretary may require.

*History Note: Statutory Authority G.S. 105-164.13; 105-164.15; 105-262; 105-264;
Eff. March 15, 1980;
Amended Eff. July 1, 1990.*

.5447 MOTOR VEHICLE LEASE AND RENTAL REPORT FORM: E-500F

The Motor Vehicle Lease and Rental Report Form, E-500F, is for use by taxpayers who remit the highway use tax to the Secretary of Revenue on the lease or rental of motor vehicles in this State. A supply of the report will be furnished to taxpayers who request them.

*History Note: Statutory Authority G.S. 105-164.15; 105-187.5; 105-262;
Eff. July 1, 1990.*

.5448 WASTE TIRE DISPOSAL FEE REPORT FORM: E-500G

The Waste Tire Disposal Fee Report Form, E-500G, is for use by taxpayers to report the one percent waste tire disposal fee liability. An initial supply of report forms is sent to taxpayers who request them and an additional supply is furnished on an annual basis thereafter.

*History Note: Statutory Authority G.S. 105-164.15; 105-262; 130A-309.54; 130A-309.56;
Eff. July 1, 1990.*

NORTH CAROLINA ADMINISTRATIVE CODE

LIST OF RULES CODIFIED

JUNE 1990

AGENCY

ACTION TAKEN

DEPARTMENT OF AGRICULTURE

2	NCAC	20B	.0107 - .0110 .0112 37 .0201 - .0203 43L .0204 .0633 48A .0611 .1201 - .1202 .1203 .1204 .1206 .1208 .1211 - .1213 .1215 - .1216 .1601 - .1608 48E .0101 .0201 .0301 - .0304 .0401 - .0403 .0501 - .0503 .0601	Repealed Adopted Amended Amended Repealed Amended Amended Amended Amended Amended Amended Amended Adopted Adopted Adopted Adopted Adopted Adopted Adopted Adopted Adopted Adopted Adopted Adopted
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DEPARTMENT OF ECONOMIC AND COMMUNITY DEVELOPMENT

4	NCAC	6B	.0101 .0105 .0201 - .0206 .0301 - .0303 .0401 - .0402 .0501 - .0509 6C .0701 - .0705 19L .0401 .0403 .0407 .1601 - .1604	Repealed Repealed Repealed Adopted Adopted Adopted Repealed Amended Amended Amended Adopted
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DEPARTMENT OF CULTURAL RESOURCES

7	NCAC	4V	.0105	Adopted
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OFFICES OF GOVERNOR/LIEUTENANT GOVERNOR

9	NCAC	2B	Executive Order Number 111 Iff. April 12, 1990 Executive Order Number 112 Iff. April 12, 1990 Executive Order Number 113 Iff. April 20, 1990 Executive Order Number 114
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Eff. May 8, 1990
Executive Order Number 115
Eff. May 22, 1990
Executive Order Number 116
Eff. May 22, 1990

DEPARTMENT OF HUMAN RESOURCES

10	NCAC	3J	.0101 - .0106	Repealed
			.0201 - .0205	Repealed
			.0301 - .0308	Repealed
			.0401 - .0413	Repealed
			.0501 - .0507	Repealed
			.0602 - .0609	Repealed
			.0701 - .0708	Repealed
			.0801 - .0807	Repealed
			.0901 - .0902	Repealed
			.1001 - .1002	Repealed
			.1101 - .1105	Repealed
			.1201 - .1204	Repealed
			.1301 - .1307	Repealed
			.1401 - .1419	Repealed
			.1504 - .1507	Repealed
			.1601 - .1603	Repealed
			.1701 - .1704	Repealed
			.1801 - .1802	Repealed
			.1901 - .1902	Repealed
			.2001 - .2026	Repealed
			.2101 - .2102	Repealed
			.2201 - .2206	Repealed
			.2301 - .2303	Aimed
			.2401 - .2404	Aimed
			.2501 - .2505	Aimed
			.2601 - .2605	Aimed
			.2701	Aimed
			.2901 - .2905	Aimed
			.3001	Aimed
			.3101 - .3105	Aimed
			.3201 - .3204	Aimed
			.3301 - .3302	Aimed
			.3401 - .3426	Aimed
			.3501 - .3506	Aimed
			.3601	Aimed
			.3701 - .3736	Aimed
			.3801 - .3807	Aimed
			.3901 - .3955	Aimed
			.5101	Repealed
			.5201	Repealed
			.5301 - .5302	Repealed
			.5401 - .5404	Repealed
			.5501 - .5507	Repealed
			.5601 - .5603	Repealed
			.5701 - .5705	Repealed
			.5801 - .5802	Repealed
			.5901 - .5907	Repealed
			.6001 - .6006	Repealed
			.6101 - .6102	Repealed
			.6201 - .6202	Repealed
			.6301	Repealed

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4B	.0107	Repealed
5A	.0001 - .0002	Repealed
5B	.0101 - .0102	Repealed
	.0201 - .0207	Repealed
5C	.0001 - .0006	Repealed
5D	.0101 - .0103	Repealed
	.0201 - .0206	Repealed
	.0301 - .0305	Repealed
	.0401 - .0404	Repealed
	.0501 - .0503	Repealed
	.0601 - .0607	Repealed
	.0701 - .0706	Repealed
	.0801 - .0811	Repealed
	.0814	Repealed
	.0817	Repealed
	.0821	Repealed
	.0823	Repealed
5E	.0101 - .0104	Repealed
	.0201 - .0205	Repealed
7A	.0303	Adopted
8B	.0701 - .0714	Repealed
8D	.0801	Amended
	.1105	Amended
10C	.0205	Amended
	.0209	Amended
10F	.0039	Amended
	.0042	Amended
10G	.0904	Amended
	.0908 - .0909	Amended
	.0912	Amended
14G	.0102	Amended
14K	.0361	* Correction
18A	.0127	* Correction
18E	.0109	Amended
20F	.0103 - .0104	Repealed
23A	.0102	Repealed
	.0103	Amended
2611	.0401	Amended
	.0403	Repealed
35E	.0202	Amended
37F	.0004 - .0007	Amended
37I	.0004 - .0007	Amended
39D	.0101 - .0107	Adopted
4111	.0101	Amended
	.0202	Repealed
	.0301	Amended
	.0502	Amended
411	.0102 - .0103	Amended
	.0201	Amended
	.0303	Amended
	.0306 - .0307	Amended
	.0311	Amended
41J	.0205	Amended
	.0207	Amended
	.0401 - .0402	Amended
41K	.0001 - .0003	Amended
41P	.0002	Amended
	.0005	Amended
	.0007 - .0008	Amended

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41Q	.0101	Amended
	.0201	Amended
	.0204 - .0205	Amended
41R	.0003 - .0004	Amended
	.0006	Amended
45G	.0111	* Correction
47A	.0102	Amended
	.0508	Amended
47B	.0104	Amended
	.0107	Amended
	.0401 - .0405	Amended
49A	.0001	Repealed
	.0002	Amended
49B	.0102	Amended
	.0202	Amended
	.0301	Amended
	.0306 - .0309	Amended
	.0502	Amended
	.0604 - .0605	Amended
	.0608	Amended
49C	.0101 - .0102	Amended
	.0104	Amended
	.0201	Amended
50A	.0601	Amended
	.0602 - .0604	Adopted
51D	.0107	Amended

DEPARTMENT OF INSURANCE

11	NCAC	8	.0905	Amended
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DEPARTMENT OF JUSTICE

12	NCAC	11	.0202	Amended
			.0207	Adopted
			.0401 - .0403	Adopted

DEPARTMENT OF LABOR

13	NCAC	7C	.0101	Amended
			.0102	Amended

DEPARTMENT OF ENVIRONMENT, HEALTH, AND NATURAL RESOURCES

15A	NCAC	6A	.0007 - .0008	Amended
		10B	.0115	Amended
			.0305	Amended
		10C	.0305	Temp. Amended
			.0305	Expires 11-1-90
			.0401	Temp. Amended
		10H	.0301 - .0302	Expires 11-1-90
		10I	.0003 - .0005	Amended

DEPARTMENT OF REVENUE

17	NCAC	6A	.0002 - .0004	Amended
		6B	.0103	Repealed

.0104	Amended
.0106 - .0107	Amended
.0109 - .0117	Adopted
.0301 - .0321	Repealed
.0401 - .0408	Repealed
.0501	Repealed
.0601 - .0603	Repealed
.0605	Amended
.0606 - .0609	Adopted
.0701 - .0706	Repealed
.0801	Repealed
.0901 - .0908	Repealed
.0910 - .0911	Repealed
.1001	Repealed
.1101	Repealed
.1201 - .1203	Repealed
.1301 - .1306	Repealed
.1401 - .1404	Repealed
.1501	Repealed
.1601 - .1602	Repealed
.1701 - .1706	Repealed
.1708 - .1709	Repealed
.1715 - .1716	Repealed
.1728	Repealed
.1730 - .1731	Repealed
.1733 - .1734	Repealed
.1737 - .1738	Repealed
.1740	Repealed
.1742 - .1744	Repealed
.1747 - .1752	Repealed
.1802	Repealed
.1901 - .1903	Repealed
.2003 - .2004	Repealed
.2102	Repealed
.2201	Repealed
.2203 - .2204	Repealed
.2301 - .2303	Repealed
.2401 - .2404	Repealed
.2502	Repealed
.2504	Repealed
.2601	Repealed
.2603 - .2604	Repealed
.2701 - .2708	Repealed
.2711 - .2713	Repealed
.2801 - .2806	Repealed
.2901	Repealed
.3001 - .3008	Repealed
.3101 - .3111	Repealed
.3203	Amended
.3205	Amended
.3209	Amended
.3301 - .3305	Repealed
.3406	Amended
.3501	Amended
.3502	Repealed
.3503	Amended
.3504 - .3509	Repealed
.3511 - .3512	Repealed
.3513	Amended

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		.3514 - .3520	Repealed
		.3521	Amended
		.3523 - .3525	Repealed
		.3526	Adopted
		.3601 - .3611	Repealed
		.3701	Amended
		.3703 - .3706	Repealed
		.3708 - .3713	Repealed
		.3714	Amended
		.3715	Repealed
		.3716	Amended
		.3717	Repealed
		.3718	Amended
		.3721 - .3722	Repealed
		.3723 - .3725	Adopted
		.3801 - .3803	Repealed
		.3804	Adopted
		.3901 - .3904	Adopted
		.4001 - .4007	Adopted
		.4101 - .4105	Adopted
6C		.0102 - .0103	Amended
		.0104	Repealed
		.0105	Amended
		.0113 - .0116	Repealed
		.0117	Amended
		.0118	Repealed
		.0120	Amended
		.0122	Repealed
		.0123 - .0126	Adopted
		.0201	Amended
		.0203	Amended
		.0204	Adopted
6D		.0102	Amended
		.0201	Amended
		.0202 - .0205	Repealed
		.0206 - .0211	Adopted

BOARD OF COSMETIC ART EXAMINERS

21	NCAC	14J	.0304 - .0305	* Correction
		14M	.0001	* Correction

BOARD OF MEDICAL EXAMINERS

21	NCAC	32D	.0001 - .0009	Repealed
		32L	.0001 - .0009	Adopted
			.0011 - .0012	Adopted

BOARD OF EXAMINERS OF PLUMBING AND HEATING CONTRACTORS

21	NCAC	50	.0306	* Correction
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The Administrative Rules Review Commission (ARRC) objected to the following rules in accordance with G.S. 143B-30.2(c). State agencies are required to respond to ARRC as provided in G.S. 143B-30.2(d).

ECONOMIC AND COMMUNITY DEVELOPMENT

Savings Institutions Division <i>4 NCAC 16A .0302 - Response of Administrator to Petition</i>	<i>ARRC Objection 5/17/90</i>
<i>4 NCAC 16A .0402 - Informal Settlement</i>	<i>ARRC Objection 5/17/90</i>

ENVIRONMENT, HEALTH, AND NATURAL RESOURCES

Environmental Management <i>15A NCAC 2F .0102 - General Criteria</i>	<i>ARRC Objection 5/17/90</i>
<i>15A NCAC 2F .0105 - Effective Contingent Upon Federal Funds Allocated</i>	<i>ARRC Objection 5/17/90</i>

HUMAN RESOURCES

Youth Services <i>10 NCAC 44F .1305 - Corporal Punishment and Child Abuse</i>	<i>ARRC Objection 5/17/90</i>
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LICENSING BOARDS AND COMMISSIONS

Certification Board for Social Work <i>21 NCAC 63 .0104 - Organization of the Board</i>	<i>ARRC Objection 5/17/90</i>
<i>21 NCAC 63 .0301 - Written Examinations</i>	<i>ARRC Objection 5/17/90</i>
<i>21 NCAC 63 .0403 - Renewal Fees</i>	<i>ARRC Objection 5/17/90</i>

This Section of the *Register* lists the recent decisions issued by the North Carolina Supreme Court, Court of Appeals, Superior Court (when available), and the Office of Administrative Hearings which invalidate a rule in the North Carolina Administrative Code.

10 NCAC 3R .0317(g) - WITHDRAWAL OF A CERTIFICATE

Robert Roosevelt Reilly, Jr., Administrative Law Judge with the Office of Administrative Hearings, declared Rule 10 NCAC 3R .0317(g) void as applied in *Dawn Health Care, a North Carolina General Partnership, Petitioner v. Department of Human Resources, Certificate of Need Section, Respondent* (90 DIIR 0296).

The North Carolina Administrative Code (NCAC) has four major subdivisions of rules. Two of these, titles and chapters, are mandatory. The major subdivision of the NCAC is the title. Each major department in the North Carolina executive branch of government has been assigned a title number. Titles are further broken down into chapters which shall be numerical in order. The other two, subchapters and sections are optional subdivisions to be used by agencies when appropriate.

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3	Auditor	Barber Examiners	6
4	Economic and Community Development	Certified Public Accountant Examiners	8
5	Correction	Chiropractic Examiners	10
6	Council of State	General Contractors	12
7	Cultural Resources	Cosmetic Art Examiners	14
8	Elections	Dental Examiners	16
9	Governor	Electrical Contractors	18
10	Human Resources	Foresters	20
11	Insurance	Geologists	21
12	Justice	Hearing Aid Dealers and Fitters	22
13	Labor	Landscape Architects	26
14A	Crime Control and Public Safety	Landscape Contractors	28
15A	Environment, Health, and Natural Resources	Marital & Family Therapy	31
16	Public Education	Medical Examiners	32
17	Revenue	Midwifery Joint Committee	33
18	Secretary of State	Mortuary Science	34
19A	Transportation	Nursing	36
20	Treasurer	Nursing Home Administrators	37
*21	Occupational Licensing Boards	Occupational Therapists	38
22	Administrative Procedures	Opticians	40
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25	State Personnel	Pharmacy	46
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		Practicing Psychologists	54
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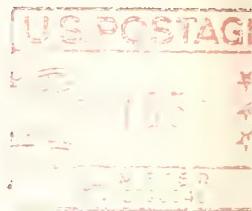
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